

J. Mark Stewart (Wy. Bar No. 6-4121)
DAVIS & CANNON, LLP
422 W. 26th Street
Cheyenne, WY 82001
307-634-3210
307-778-7118 (fax)
mark@davisandcannon.com

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

2018 NOV -2 PM 1:13

STEPHAN HARRIS, CLERK
CHEYENNE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, for the Use)
and Benefit of BART'S ELECTRIC COMPANY,)
INC., *A Missouri Corporation*,)

Plaintiff,)

vs.)

Case No. 18-cv-181-F

GILBANE FEDERAL,)
A California Corporation,)

and)

TRAVELERS CASUALTY AND SURETY)
COMPANY OF AMERICA,)
A Connecticut Corporation,)

Defendants.)

COMPLAINT

For its cause of action against Gilbane Federal and Travelers Casualty and Surety Company of America, Bart's Electric Company, Inc. states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. This action involves a construction project for the federal government at F.E. Warren Air Force Base in Cheyenne, Wyoming for the design build, construction and outfitting of the F.E. Warren Medical Clinic Building #160, Contract #W9127S-13-D-6000, Delivery Order 0002 (the "Project").

2. Defendant Travelers Casualty and Surety Company of America (“Travelers” or the “Surety”) is a corporate surety that is a Connecticut corporation in good standing with its principal place of business in Connecticut, is registered to do business in Wyoming, and provided a payment bond for the Project as surety pursuant to 40 U.S.C. § 3131 bearing Bond #106144602 (the “Miller Act Bond”). Travelers’ principal office is located at One Tower Square, Hartford, Connecticut, 06183.

3. A true and accurate copy of the Miller Act Bond is attached as **Exhibit “1”**.

4. Defendant Gilbane Federal (“Gilbane”), a California corporation with its principal place of business in Concord, California, was the prime contractor on the Project and is the principal under the Miller Act Bond. Gilbane’s principal office is located at 1655 Grant Street, Suite 1200, Concord, California, 94520.

5. Plaintiff Bart’s Electric Company, Inc. (“Bart’s” or “Plaintiff”) is a Missouri corporation in good standing with a place of business in Pleasant Valley, Missouri and was a subcontractor to Gilbane on the Project. Bart’s principal office is located at 7103 Stewart Road, Pleasant Valley, Missouri, 64068.

6. Gilbane can be served with process in Wyoming through CT Corporation System, its registered agent, at 1908 Thomas Avenue, Cheyenne, Wyoming 82001.

7. Pursuant to WYO. STAT. § 26-3-121, Travelers can be served with process through the Wyoming Insurance Commissioner, his deputy or a person in apparent charge of his office during the Commissioner’s absence by leaving two (2) copies of the process together with the fee provided in WYO. STAT. § 26-4-101, in accordance with WYO. STAT. § 26-3-122.

8. The United States District Court for the District of Wyoming has subject matter jurisdiction over this action under 40 U.S.C. § 3133(b)(1) because plaintiff furnished labor and

materials in carrying out work provided for in a contract for which a payment bond was furnished under 40 U.S.C. § 3131 and was not paid in full within 90 days after the day on which plaintiff did or performed the last of the labor or furnished or supplied the material for which the claim is made. There is also subject matter jurisdiction over the claims between plaintiff and Gilbane under 28 U.S.C. § 1332 because the parties are citizens or domiciles of different states.

9. The United States District Court for the District of Wyoming has personal jurisdiction over Defendants under WYO. STAT. § 5-1-107 because Gilbane is registered to do business in Wyoming, Gilbane and Travelers both transacted business in Wyoming, and plaintiff's claims relate to a federal construction project in Wyoming.

10. Venue is proper in the District of Wyoming under 40 U.S.C. § 3133(b)(3) because Gilbane's prime contract and plaintiff's subcontract for the Project were both performed in Cheyenne, Wyoming.

GENERAL ALLEGATIONS

11. Gilbane is engaged in the business of providing construction services, including providing construction services to the Federal Government.

12. The United States of America acted through the Department of the Army, U.S. Army Corps of Engineers ("USACE" or the "Owner") for the Project.

13. The specific component of the USACE involved in this procurement for Project was the Little Rock District, 700 W. Capitol Avenue, RM 7315, Little Rock, Arkansas 72203-3225.

14. On or about April 30, 2014 the USACE entered into a contract with Gilbane for the Project.

15. On or about February 20, 2015, Gilbane hired and entered into a written contract with Bart's as a subcontractor for the Project.

16. A true and accurate copy of the written and executed Subcontract Order No. JGFJV00003-006 dated February 20, 2015 between Gilbane and Bart's for the Project (the "Subcontract") is attached as **Exhibit "2"**.

17. The Subcontract provides for California law to govern the Subcontract and the parties' disputes.

18. The original lump sum amount for Bart's work on the Project was \$1,800,865.51.

19. Gilbane issued change orders for Bart's work totaling \$46,609, increasing the amount of the Subcontract to \$1,847,474.51.

20. Gilbane made payments to Bart's for the Project totaling only \$1,184,141.68, leaving an unpaid contract balance of \$663,332.83.

21. On or about September 20, 2017, the Owner issued a unilateral deduct to Gilbane, who then issued a unilateral deduct to Bart's of \$663,332.83 on November 14, 2017.

22. Gilbane and Bart's both dispute the amount of the unilateral deduct issued by the Owner, which is being formally contested by Gilbane in a proceeding before the Armed Services Board of Contract Appeals.

23. Bart's believes that the deduct applicable to the electrical scope of work under the Subcontract should be no more than \$430,571, leaving, at minimum, a remaining unpaid principal amount due Bart's of \$232,761.83.

24. Gilbane has failed and refused to make full payment to Bart's for work on the Project.

25. Prior to filing this action, Bart's gave notice and submitted a claim to the Surety under the Miller Act Bond.

26. The Surety rejected and failed to pay Bart's claim under the Miller Act Bond.

27. The Subcontract provides for binding Arbitration between Bart's and Gilbane regarding unresolved disputes on the Project.

28. Bart's and Gilbane have agreed to a stay of this action pending a conclusion of Arbitration proceedings between Bart's and Gilbane.

**COUNT I – BREACH OF CONTRACT
(AGAINST GILBANE FEDERAL)**

29. Plaintiff incorporates and realleges herein the allegations set out in paragraphs 1 to 28 above.

30. The Subcontract is a valid, existing and enforceable contract between Bart's and Gilbane for the Project.

31. Bart's substantially performed its obligations under the Subcontract.

32. Gilbane breached the Subcontract by failing to make full payment to Bart's for work on the Project.

33. Gilbane's breach of the Subcontract has damaged Bart's in the principal amount of at least \$232,761.83.

34. On or about August 20, 2018, Bart's made demand on Gilbane for the above unpaid principal amount due under the Subcontract.

35. Gilbane failed and refused to pay and continues to fail and refuse to pay any additional amount for Bart's work on the Project.

36. The Subcontract authorizes the assessment of attorney's fees and costs in favor of the substantially prevailing party.

37. Bart's has incurred and will continue to incur interest, court costs, expenses and attorney's fees as a result of the above breach of the Subcontract by Gilbane.

WHEREFORE, Plaintiff Bart's Electric Company, Inc. prays for a judgment in its favor and against defendant Gilbane Federal on Count I of the Complaint in the principal amount of at least \$232,761.83, plus prejudgment interest and post-judgment interest; for the costs of this action; for its attorney's fees incurred herein; and for such further relief that the Court deems just and proper.

**COUNT II – QUANTUM MERUIT/UNJUST ENRICHMENT
(AGAINST GILBANE FEDERAL)**

38. Plaintiff incorporates and realleges herein the allegations set out in paragraphs 1 to 37 above.

39. Bart's work on the Project conferred a benefit on Gilbane.

40. Gilbane appreciated and knew of the benefit conferred by Bart's on the Project.

41. Gilbane accepted and retained the benefit conferred by Bart's on the Project under circumstances that make it inequitable for Gilbane to retain the benefit without full payment of its value.

42. After taking into account all payments and other credits, the reasonable value of the benefit conferred upon Gilbane by Bart's and the amount by which Gilbane was unjustly enriched on the Project is at least \$232,761.83.

WHEREFORE, Plaintiff Bart's Electric Company Inc. prays for judgment in its favor and against defendant Gilbane Federal on Count II of the Complaint – in the alternative to Count I – in the principal amount of at least \$232,761.83, plus prejudgment interest and post-judgment interest; for the costs of this action; and for such further relief that the Court deems just and proper.

**COUNT III – MILLER ACT CLAIM
(AGAINST GILBANE FEDERAL AND TRAVELERS CASUALTY
AND SURETY COMPANY OF AMERICA)**

43. Plaintiff incorporates and realleges herein the allegations set out in paragraphs 1 to 42 above.

44. As a subcontractor to Gilbane, the Principal, Bart's is a proper claimant under the Miller Act Bond.

45. As an unpaid subcontractor, Bart's has a valid claim under the Miller Act Bond in the amount of at least \$232,761.83.

46. There are no other valid offsets or deducts to Bart's claim.

47. Bart's last day of work on the Project was around November 17, 2017.

48. On or about August 20, 2018, Bart's notified Travelers of its claim against Gilbane and made a claim under the Miller Act Bond issued by the Surety.

49. On or about August 27, 2018, Travelers acknowledged receipt of Bart's claim under the Miller Act Bond and requested certain backup documentation in order to investigate plaintiff's claim.

50. Travelers' letter dated August 27, 2018 did not disclose to or advise plaintiff of any time limits concerning the Miller Act Bond that may apply to Bart's claim.

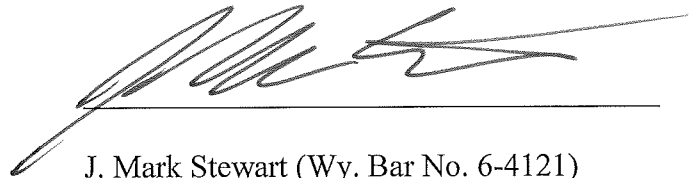
51. On or about September 6, 2018, Plaintiff provided backup documentation for its claim to Travelers.

52. On or about October 25, 2018, Travelers denied Plaintiff's claim under the Miller Act.

53. Defendants are both liable to Plaintiff under the Miller Act Bond.

WHEREFORE, Plaintiff Bart's Electric Company, Inc. prays for a judgment in its favor and against Defendants Gilbane Federal and Travelers Casualty and Surety Company of America, jointly and severally, on Count III of the Complaint – jointly and severally with Counts I and II – in the principal amount of at least \$232,761.83, plus prejudgment interest and post-judgment interest; for the costs of this action; for its attorney's fees incurred herein; and for such further relief that the Court deems just and proper.

DAVIS & CANNON, LLP

A handwritten signature in black ink, appearing to read 'J. Mark Stewart', is written over a horizontal line.

J. Mark Stewart (Wy. Bar No. 6-4121)
422 W. 26th Street
Cheyenne, WY 82001
307-634-3210
307-778-7118 (fax)
mark@davisandcannon.com

Attorney for Plaintiff

PERFORMANCE BOND (See instructions on reverse)	EXECUTED (Must be same or later than date of 10/1/2014	OMB Number: g000-004S Expiration Date: 6/30/2016
--	---	---

PAPE RWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/IC 9000-0045, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.

PRINCIPAL (Legal name and business address) GILBANE FEDERAL JOINT VENTURE 2730 Shadelands Drive, Suite 100 Walnut Creek, CA 94598	TYPE OF ORGANIZATION ("X" one) <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input checked="" type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION CA
---	--

SURETY(IES) (Name(s) and business address(es)) TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA One Tower Square, Hartford, CT 06183	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="4">PENAL SUM OF BOND</th> </tr> <tr> <th>MILLION(\$)</th> <th>THOUSANDS</th> <th>HUNDRED(\$)</th> <th>CENTS</th> </tr> <tr> <td>18</td> <td>313</td> <td>801</td> <td>00</td> </tr> <tr> <td colspan="2">CONTRACT DATE</td> <td colspan="2">CONTRACT NO.</td> </tr> <tr> <td colspan="2">9/26/2014</td> <td colspan="2">W9127S-13-D-6000 Task Order 0002</td> </tr> </table>	PENAL SUM OF BOND				MILLION(\$)	THOUSANDS	HUNDRED(\$)	CENTS	18	313	801	00	CONTRACT DATE		CONTRACT NO.		9/26/2014		W9127S-13-D-6000 Task Order 0002	
PENAL SUM OF BOND																					
MILLION(\$)	THOUSANDS	HUNDRED(\$)	CENTS																		
18	313	801	00																		
CONTRACT DATE		CONTRACT NO.																			
9/26/2014		W9127S-13-D-6000 Task Order 0002																			

OBLIGATION

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we the sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS

The Principal has entered into the contract identified above.

THEREFORE

The above obligation is void if the Principal-

(a)(1) Performs and fulfills all the undertaking, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice of the Surety(ies) and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to 41 U.S.C. Chapter 31, Subchapter 111, Bonds, which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

WITNESS

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.


PRINCIPAL			
SIGNATURE(S)	1. (Seal)	2. _____ (Seal)	3. _____ (Seal)
NAME(S) & TITLE(S) (Typed)	1. Daryl Greenway Vice President	2. _____	3. _____

INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	1. _____ (Seal)	2. _____ (Seal)	3. _____ (Seal)
NAME(S) (Typed)	1. _____	2. _____	3. _____

CORPORATE SURETY(IES)			
SURETY	NAME & ADDRESS	1. TRAVELERS AND SURETY COMPANY OF AMERICA One Tower Square, Hartford, CT 06183	STATE OF INC. CT
	SIGNATURE(S)	1.	2. _____
	NAME(S) & TITLE(S) (Typed)	1. D. Wilson, Attorney-in-Fact	2. _____

CORPORATE SURETY(IES) (Continued)

SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT(\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1. Attorney-in-Fact	2.		
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT(\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1. Attorney-in-Fact	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT(\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1. Attorney-in-Fact	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT(\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT(\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT(\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT(\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

BOND PREMIUM		RATE PER THOUSAND(\$)	TOTAL(\$)
		6.35	\$ 129,085.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3 (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE

SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the words "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

Bond No. 10n144.2

PAYMENT BOND (See instructions on reverse)		DATE BOND EXECUTED (Must be same or later than date of contract) 10/1/2014		OMB Number: 9000-0045 Expiration Date: 6/30/2016	
<p>PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/C 9000-0045, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.</p>					
PRINCIPAL (Legal name and business address) GILBANE FEDERAL JOINT VENTURE 2730 Shadelands Drive, Suite 100 Walnut Creek, CA 94598			TYPE OF ORGANIZATION (If "one") <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input checked="" type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION		
SURETY(IES) (Name(s) and business address(es)) TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA One Tower Square, Hartford, CT 06183			STATE OF INCORPORATION CA		
			PENAL SUM OF BOND		
MILLION(S)		THOUSAND(S)		HUNDRED(S)	
18		313		801	
				CENTS	
				00	
CONTRACT DATE			CONTRACT NO.		
9/26/2014			W9127S-13-D-6000 Task Order 0002		

OBLIGATION:

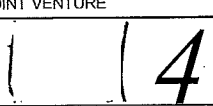
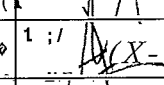
We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

GILBANE FEDERAL JOINT VENTURE		PRINCIPAL	
SIGNATURE(S)	1. 	2. (Seal)	3. (Seal)
NAME(S) & TITLE(S) (Typed)	1. oa/y\ Greenway Vice President	2.	3.
Corporate Seal			
INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	1. (Seal)	2. (Seal)	
NAME(S) (Typed)	1.	2.	
CORPORATE SURETY(IES)			
NAME & ADDRESS	TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA One Tower Square, Hartford, CT 06183		STATE OF INC. CT
SIGNATURE	1. 		2.
NAME(S) & TITLE(S) (Typed)	1. J. L. Gilson, Attorney-in-Fact		2.
Corporate Seal			

AUTHORIZED FOR LOCAL PRODUCTION
Previous edition is usable

STANDARD FORM 25A (REV. 3/2013)
Prescribed by GSA-FAR (48 CFR) 53.2228(c)

CORPORATE SURETY(IES) (Continued)

SURETY A	NAME & ADDRESS	1.	STATE OF INC.	LIABILITY	LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1. Attorney-in-Fact	2.			
SURETY B	NAME & ADDRESS	1.	STATE OF INC.	LIABILITY	LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1. Attorney-in-Fact	2.			
SURETY C	NAME & ADDRESS	1.	STATE OF INC.	LIABILITY	LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1. Attorney-in-Fact	2.			
SURETY D	NAME & ADDRESS	1.	STATE OF INC.	LIABILITY	LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1. Attorney-in-Fact	2.			
SURETY E	NAME & ADDRESS	1.	STATE OF INC.	LIABILITY	LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1.	2.			
SURETY F	NAME & ADDRESS	1.	STATE OF INC.	LIABILITY	LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1.	2.			
SURETY G	NAME & ADDRESS	1.	STATE OF INC.	LIABILITY	LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1.	2.			

INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under 40 U.S.C. Chapter 31, Subchapter III, Bonds. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the words "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

TRAVELERSJ**POWER OF ATTORNEY**

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 226836

Certificate No. QQ5846283

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Mark P. Herendeen, Kevin A. White, Jean Correia, Maria Chaves, Theresan E. Rowedder, Jane Gilson, and Bryan Huft

of the City of Boston, State of Massachusetts, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 28th day of March 2014.

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company



State of Connecticut
 City of Hartford ss.

By: Robert L. Raney
 Robert L. Raney, Senior Vice President

On this the 28th day of March 2014, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
 My Commission expires the 30th day of June, 2016.



Marie C. Tetreault
 Marie C. Tetreault, Notary Public

TEXAS PACIFIC INDEMNITY COMPANY (NAIC #20388)
BUSINESS ADDRESS: 15 Mountain View Road, Warren, NJ 07059. PHONE: (214) 754-0777.
UNDERWRITING LIMITATION b/: \$721,000. SURETY LICENSES c,f/: AR, OK, TX. INCORPORATED IN: Texas.

TRANSATLANTIC REINSURANCE COMPANY (NAIC #19453)

BUSINESS ADDRESS: One Liberty Plaza, 165 Broadway, NEW YORK NY 10006. PHONE: (212) 365-2200.
UNDERWRITING LIMITATION b/: \$471,893,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, NY, OH, OK, PA, SD, UT, WA, WI. INCORPORATED IN: New York.

Travelers Casualty and Surety Company (NAIC #19038)

BUSINESS ADDRESS: ONE TOWER SQUARE. HARTFORD, CT 06183. PHONE: (860) 277-0111.
UNDERWRITING LIMITATION b/: \$438,950,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of America (NAIC #31194)

BUSINESS ADDRESS: ONE TOWER SQUARE. HARTFORD, CT 06183. PHONE: (860) 277-0111.
UNDERWRITING LIMITATION b/: \$188,172,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty Insurance Company of America (NAIC #19046)

BUSINESS ADDRESS: ONE TOWER SQUARE. HARTFORD, CT 06183. PHONE: (860) 277-0111.
UNDERWRITING LIMITATION b/: \$54,976,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Indemnity Company (The) (NAIC #25658)

BUSINESS ADDRESS: ONE TOWER SQUARE. HARTFORD, CT 06183. PHONE: (860) 277-0111.
UNDERWRITING LIMITATION b/: \$670,613,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

t.. [Back To Top](#)

Gilbane

October 2, 2014

Mr. Arthur J. Brown
Department of the Army
Little Rock District, Corps of Engineers
P.O. Box 867
Little Rock, AR 72201-3225

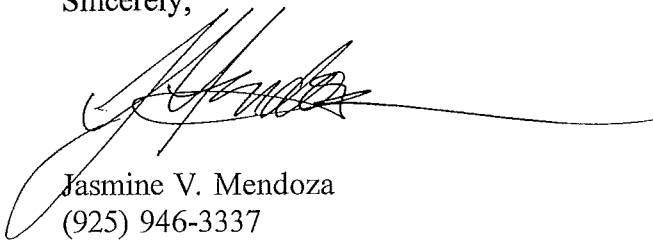
Re: Performance and Payment Bonds issued for Contract W9127S-13-D-6000, Task Order 0002, Cheyenne WY

Dear Mr. Brown:

Enclosed, please find Gilbane Federal's fully executed Performance and Payment Bonds for the above referenced Contract Award. The contract was awarded on 26-Sept-2014 in the amount of \$18,313,801.00.

Please contact the undersigned if you require any additional information.

Sincerely,



Jasmine V. Mendoza
(925) 946-3337
jmendoza@gilbaneco.com

ORDER FOR SUPPLIES OR SERVICES										PAGE 1 OF 19
1. CONTRACT/PURCH. ORDER/ AGREEMENT NO. W9127S-13-D-6000		2. DELIVERY ORDER/ CALL NO. 0002		3. DATE OF ORDER/CALL (YYYYMMDD) 2014 Sep 26		4. REQ/ PURCH. REQUEST NO. See Schedule		5. PRIORITY		
6. ISSUED BY CONTRACTING DIVISION USAGE, LITTLE ROCK (W9127S) 700 W CAPITOL AVE, RM 7315 LITTLE ROCK AR 72201-3225				7. ADMINISTERED BY (if other than 6) SEE ITEM 6		8. DELIVERY FOB DESTINATION OTHER (See Schedule if other)				
9. CONTRACTOR CODE 16UBF8 GILBANE FEDERAL JOINT VENTURE TEJ SINGH 2730 SHADELANDS DR STE 100 WALNUT CREEK CA 94598-2540				FACILITY 1		10. DELIVER TO FOB POINT BY (Date) (YYYYMMDD) SEE SCHEDULE		11. MARK F BUSINESS S S S M W SMALL DISADVANTAGED WOMEN-OWNED		
						12. DISCOUNT TERMS				
						13. MAIL INVOICES TO THE ADDRESS IN BLOCK See Item 15				
14. SHIP TO HE WARREN AFB 90TH MEDICAL SUPPORT GRP HE WARREN AFB WY 82005-3906				15. PAYMENT WILL BE MADE BY CODEj 964145 US ARMY CORPS OF ENGRS FINANCE CENTER 5722 INTEGRITY DR ME MILINGTON, TN TN 38054-5005		MARK ALL PACKAGES AND PAPERS WITH IDENTIFICATION NUMBERS IN BLOCKS 1 AND 2				
16. TYPE OF ORDER		DELIVERY/ CALL <input checked="" type="checkbox"/>		This delivery order/call is issued on another Government agency or in accordance with and subject to terms and conditions of above numbered contract.						
		PURCHASE		Reference your quote dated Furnish the following on terms specified herein. REF:						
ACCEPTANCE. THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.										
NAME OF CONTRACTOR				SIGNATURE		TYPED NAME AND TITLE		DATE SIGNED (YYYYMMDD)		
<input checked="" type="checkbox"/> If this box is marked, supplier must sign Acceptance and return the following number of copies: 1										
17. ACCOUNTING AND APPROPRIATION DATA/ LOCAL USE See Schedule										
18. ITEM NO.		19. SCHEDULE OF SUPPLIES/ SERVICES			20. QUANTITY ORDERED/ ACCEPTED*		21. UNIT	22. UNIT PRICE	23. AMOUNT	
		SEE SCHEDULE								
* If quantity accepted by the Government is same as quantity ordered, indicate by X. If different, enter actual quantity accepted below quantity ordered and encircle.					24. UNITED STATES OF AMERICA TEL: (501) 324-6974 EXT 1083 EMAIL: a.j.brown@us.army.mil BY: ARTHUR J BROWN			25. TOTAL \$18313,801.00	26. DIFFERENCES	
27a. QUANTITY IN COLUMN 20 HAS BEEN Or NSPECTED <input type="checkbox"/> RECEIVED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED										
b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE					c. DATE (YYYYMMDD)		d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE			
e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE					28. SHIP NO.		29. DO VOUCHER NO.		30. INITIALS	
f. TELEPHONE NUMBER & E-MAIL ADDRESS					B. PARTIAL FINAL		32. PAID BY		33. AMOUNT VERIFIED CORRECT FOR	
36. I certify this account is correct and proper for payment.					31. PAYMENT § COMPLETE PARTIAL FINAL				34. CHECK NUMBER	
a. DATE (YYYYMMDD)		b. SIGNATURE AND TITLE OF CERTIFYING OFFICER							35. BILL OF LADING NO.	
37. RECEIVED AT		38. RECEIVED BY DATE RECEIVED 139, (YYYYMMDD)			40. TOTAL CONTAINERS		41. S/R ACCOUNT NO		42. S/R VOUCHER NO.	

EXHIBIT 2

SUBCONTRACT ORDER NO.

JGFJV00003-006

Subcontractor:	Contractor/Buyer:	Buyer Representative:
Name: Barts Electric Company Address: 7103 Stewart Road Pleasant Valley, MO 64068 Phone: (816) 421-0007 Fax: (816) 472-1638	Gilbane Federal 2730 Shadelands Drive Walnut Creek, CA 94598 Telephone: (925) 946-3100 Contractor's License No.: 702708A-HAZ	Buyer: Shawn Sanchez E-mail: s.sanchez@gilbaneco.com Phone: 801-330-1976 Fax: Web Site: www.gilbanefederal.com
Subcontractor's Authorized Representative:	TOTAL SUBCONTRACT AMOUNT: \$1,800,865.51	
Name: Brett Walker	One Million Eight Hundred Thousand Eight Hundred Sixty Five Dollars and Fifty One Cents	
Title: Vice President	Contract Type: Firm Fixed Price	Liquidated Damages: Yes See Special Provisions
E-mail: brett.walker@bartselectric.com	Payment Terms: Pay When Paid-Net 7	Retention Applied: Yes-10%
	Payment & Performance Bonds: Yes	DPAS Rating: No Rating
	Applicable Wage Decision: Davis Bacon Act	Number: WY140023 Mod 0, dated 1/3/2014
	Period of Performance: Begin: March 31, 2015	End: September 17, 2017

Attach. Table of Contents: This Subcontract consists of this cover page and the following documents:

A	Statement of Work for Electrical Work, dated February 20, 2015
B	Price Schedule dated February 20, 2015
C	Gilbane Federal Design-Build Constructor Subcontract General Conditions - USA, dated Jan, 2015
D	Federal Acquisition Regulation (FAR) and Other Flow down Clauses
E	Prevailing Wage Determination and Certified Payroll Requirements
F	Conditional Progress and Final Payment Release Forms
G	Subcontracting Plan

Invoicing Requirements

Invoices must reference the above Subcontract Number and be submitted with an executed release form. All invoices are to be emailed to Accounts Payable at GF_AP@gilbaneco.com

Special Provisions:

Please see Subcontract Attachment A, Section 6B for Liquidated Damages.

Notice to Proceed

Subcontractor may not begin work without a fully executed Subcontract, 100% Payment and Performance Bonds and COI naming Gilbane Federal as additional insured.

Prime Contract	Delivery Location	Project Manager/Technical Representative
Contract Number: W9127S-13-D-6000	Medical Clinic Renovation	Name: Gearld A. Jones
TO/DO Number: 0002	FE Warren AFB	Phone: (408) 569-7224
Gilbane Federal Client: USACE	Cheyenne, WY	E-mail: gjones@gilbane.com
Government		

Signatures

This Subcontract is executed effective upon signature by both parties.

BARTS ELECTRIC COMPANY		GILBANE FEDERAL	
By:		By:	
Signature	Date	Signature	Effective Date
Printed Name		Printed Name	
Title		Title	
		Penny Battles	
		Sr. Director of Procurement	

ATTACHMENT A: STATEMENT OF WORK

February 20, 2015

Gilbane Federal – Barts Electric Company

Subcontract No.: JGFJV00003-006

Electrical Work

**Design-Build Construction and Initial Outfitting (DBIO) F.E. Warren AFB, Building 160
Gilbane Prime Contract No. W9127S-13-D-6000**

1. Project & Subcontractor's Work Summary:

Gilbane Federal has been awarded a Prime Contract task order (Contract No.: W9127S-13-D-6000, Delivery Order 0002) by its Client, USACE, Little Rock, 700 W. Capitol Ave, RM 7315, Little Rock AR. 72201-3225, for the design build, construction and outfitting of the F.E. Warren Medical Clinic Building #160.

Barts Electric Company (Subcontractor) shall, pursuant to its Subcontract with Gilbane Federal, perform *Electrical Work* for the Project as required of Gilbane Federal by Gilbane Federal's Prime Contract task order (Work), as further described in this Statement of Work (SOW). This SOW describes the Work to be performed by Subcontractor on the Project.

2. Applicable Codes & Standards:

Subcontractor shall identify and comply with all applicable federal, state, and local statutes; all applicable law, building codes and standards; all industry criteria and codes; all USACE Building/Design Standards; and all codes and standards listed in the SOW Documents. In case of conflict between any codes, standards, laws, ordinances, rules, and regulations or within any document itself, the more stringent-to-Subcontractor requirement shall govern.

3. SOW Documents:

Subcontractor shall perform all Work required to complete the Project in strict accordance with the following described documents (**SOW Documents**), which are hereby **incorporated** into this SOW and shall apply to the Work:

A. Referenced SOW Documents:

Attachment A.1	US Army Corps of Engineers Design-Build Request for Proposal, Contract No.: W9127S-13-D-6000, Delivery Order 0002) by its Client, USACE, Little Rock, 700 W. Capitol Ave, RM 7315, Little Rock AR. 72201-3225, for the design build, construction and outfitting of the F.E. Warren Medical Clinic Building #160.
Attachment A.2	RFP Amendments 1, 2 and 3

Attachment A.3	Questions and Answers (Projnet), dated July 22-29, 2014
Attachment A.4	Project Schedule – FE Warren Clinic Renovation (W9127S-13-D-6000) Draft Preliminary Project Schedule, dated 9-26-2014

The above referenced documents can be downloaded from Gilbane's File Transfer Site at the following address: <ftp://files.gilbanetech.com> *****PLEASE USE WINDOWS EXPLORER (NOT INTERNET EXPLOER) TO ACCESS THE FTP SITE*****. (On your desktop right-click on Start – Select "Explore"- In address bar of new window, enter <ftp://files.gilbanetech.com> and hit Enter) This method allows you to upload/download (drag and drop) **multiple files at a time**.

Please use the following username and password to login:

Username: warrensub | **Password:** gilbane

Once logged in please access files located under the folder named "Procurement".

Subcontractor acknowledges receipt and review of all attached and referenced/completed SOW Documents. Furthermore, Subcontractor agrees to be fully bound by all revised SOW Documents to be later provided.

4. Detailed Subcontractor Work Description:

Except as expressly excluded below in **Section 5**, Subcontractor shall perform **all** work required of Gilbane Federal by Gilbane Federal's Prime Contract task order, including all SOW documents. Such Work includes but is not limited to the following:

A. Make Safe Demolition

In areas of heavy and medium renovation all circuits will be disconnected, verified, conduit and boxes, etc. will be marked in such a way they can be identified by demolition crews for removal and disposal by others. In areas of light renovation most electrical systems will remain, but any components scheduled for demolition will be identified for removal and disposal by others. In all areas of renovations where light fixtures are to be replaced, they will be dropped to the ground for removal and disposal by others, including hazardous materials such as lamps and ballasts.

B. Mechanical Equipment Disconnects

Subcontractor will include and provide any fused/non-fused disconnects for all mechanical and plumbing related equipment. Automatic motor starters, combination motor starter/disconnects, VFD's will need to be provided by others. Subcontractor will install and wire this equipment.

C. Class A Fire Alarm System

Class A system, only providing conduit stub ups including pull strings to accessible ceiling in finished area and conduit concealment in areas of exposed wiring. The wiring in accessible concealed areas will be plenum rated wiring.

D. Queuing System Scope

Rework the recently replaced system to provide a functional system for the pharmacy only.

E. Surgical & Exam Lights

Provide standard lay-in fixtures for general illumination within the rooms, including those that would be provided directly over a procedure area. If a room does require a specialty permanently mounted exam light per the room contents list, Bart's will provide power connections to that fixture. Installation of the fixture would be performed by others; also excludes providing any of the specialty medical lighting for exam and procedure rooms.

F. Telephone System, Security Systems, Access Control Systems, Etc.

Scope of work for the electronic access control includes re-working the recently installed system. Re-use of all applicable hardware wherever possible. Only expanding on the system where required so by UFC. Only accounting for electronic access control where required by code. There is no contingency for user requested/desired access control on doors that is not required by code.

Intrusion detection system will be provided for the pharmacy areas as required per UFC. A complete system of boxes, conduit, wire, cable, sensors and equipment will be provided. Re-use the existing system and expand on it as necessary.

Re-use the existing duress alarm system and re-configure as necessary for the renovation in the mental health area.

CCTV system - Relocate existing cameras if needed and only expand on the system as minimally required. Excludes new head end equipment.

Excludes Directional way-finding systems and components such as monitors, TV's and digital message boards and associated wiring.

Provide CATV wiring to the TV locations throughout the renovated areas as required by the UFC and/or room contents list.

Audio/Visual equipment and wiring in conference rooms and similar- Include only the required power to equipment and the box and conduit requirements for a particular system. The cabling such as specialized A/V wiring, jacks, plates, etc. are to be provided and installed by others. Smart boards, televisions, monitors, projectors, projections screens, amplifiers, etc. is also to be provided and installed by others.

A new tone/visual nurse call system will be provided in medium and heavy renovation areas to serve the requirements of the project.

The existing overhead paging system will be re-used and extended into the medium and heavy renovation areas. The existing interface with the telephone system will remain to provide paging and intercom functions through the telephone system.

All existing communication rooms will remain in place as they are adequately spaced to provide maximum function to the surrounding areas. Renovations plans that suggest/indicate the relocation of any communication rooms to accommodate renovation areas will require a pricing revision.

Refrigeration alarms will be provided and installed by Subcontractor for the units required by code to have an alarm unit provided on it.

G. Temp Power Requirements

Subcontractor shall in lieu of providing a 100A TL receptacle for a mobile RAD unit will provide temporary power to temporary HVAC equipment. Provisions for electric temporary heating equipment are not included.

Subcontractor shall provide temporary lighting, per OSHA requirements, to provide a safe and habitable work environment, excluding temporary lighting for task specific activities such as drywall finishing and painting.

5. Exclusions:

Subcontractor is not obligated to perform the following tasks: None.

6. Schedule & Liquidated Damages:

A. Schedule:

The Subcontractor is required to initiate mobilization to the Site in accordance with the project schedule. Subcontractor shall fully complete the Work within the time provided in the project schedule, and/or before September 17, 2017 whichever requires the earliest completion date.

B. Liquidated Damages:

If Subcontractor has not completed all Work by the above required dates, Subcontractor shall be liable for Liquidated Damages in the amount of (\$445.00) Four Hundred Forty Five Dollars per calendar day, excluding Sundays, until the Work is fully completed and accepted. In addition to this amount: If the Subcontractor fails to maintain continued occupancy, other than that which was previously scheduled and approved by the Government for a department, the Contractor shall pay liquidated damages to the Government in the amounts indicated below for each calendar day continued occupancy is not maintained for that department:

Dental \$11,597.46
Behavior Health \$759.76
Flight Medicine/PRP \$2,977.53
Physical Therapy \$1,200.63
Family Medicine \$3,751.00

If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

Subcontractor agrees that these Liquidated Damages are fair, utilized to compute an amount otherwise difficult to compute, and not a penalty.

7. Required Submittals and Document Deliverables:

In addition to any other submittal and/or document deliverable required by the Subcontract, Subcontractor must provide the items listed below within the indicated times:

- A. Prior to Notice to Proceed (NTP) and within seven (7) calendar days) after Subcontract execution, Subcontractor must provide the following documents:
 - 1. Insurance Certificates in accordance with **Section 5** of Gilbane Federal's Subcontract General Conditions
 - 2. 100% Payment and Performance Bonds
 - 3. Federal Representations & Certifications Form (annual)
 - 4. FFATA Federal Gross Revenue Reporting Form (annual)
 - 5. W9 Form
 - 6. Gilbane Business Partner Form
 - 7. Subcontracting Plan
- B. Subcontractor must provide all material and equipment submittals and shop drawings, and safety plan and MSDS (**in print, 8 copies and in PDF electronic file**).
- C. At regularly defined intervals during the Project Work and in addition to other requirements hereunder, Subcontractor must submit to Gilbane Federal weekly reports that document the progress for each week.
- D. Sixty days prior to the completion of all work, the Subcontractor is required to provide the following project documentary deliverables before close-out of the work:
 - 1. Operation & Maintenance Manual(s)
 - 2. Warranty Documents
 - 3. Attic Stock or Excess Materials/parts
 - 4. Test Reports
 - 5. Surveys
 - 6. Technical data produced during construction
 - 7. Training Documentation

8. Supplemental Site and Other Information:

- A. Subcontractor shall provide Gilbane Federal the list of personnel and personal information for F.E. Warren, AFB (Site) badge issuance. All Subcontractor field personnel must pass a security background check to gain access to F.E. Warren, AFB (Site). All security clearance badges are and will remain property of F.E. Warren, AFB. Subcontractor must return them immediately upon the completion of the Work Project before Gilbane Federal will release final payment.

a. The Subcontractor shall also be responsible for ensuring that all Subcontractor employees assigned to the job site(s) shall have a criminal background check performed and properly vetted. Any personnel having questionable history/backgrounds shall be rejected and not authorized to enter the jobsite. This list marked "CONFIDENTIAL" shall be submitted to the Contracting Officer for validation purposes.

b. Personnel entering in or working on Federal property may be screened and checked for criminal history and proper immigration status. To facilitate the screening and checking of each employee entering in or working on Federal property, the Subcontractor shall submit to the General Contractor:

- *The individual's full name*
- *Company Name*
- *Date of Birth (DOB)*
- *Driver's Licenses and/or State Identification Number*

c. After submission of requirements stated above, the Subcontractor shall proceed with all Work unless further notified by Gilbane to stop work.

- B. Subcontractor employees shall follow all site access and security instructions for F.E. Warren, AFB (Site) and to obtain site access all employees must have on hand a valid driver's license and current vehicle registration and insurance for vehicles entering the site. Strict compliance with facility security requirements is mandatory. Violations of security requirements shall be cause for this Subcontract to be terminated.
- C. Subcontractor, when inside the site, shall comply with all site traffic regulations.
- D. Subcontractor shall use parking areas designated for the Project for personal vehicle parking.
- E. Subcontractor shall provide its own water, HVAC, electrical, lay down and staging areas, and office facilities. Location of these facilities shall be coordinated with Gilbane Federal.
- F. Upon Gilbane Federal's requests, qualified representatives of Subcontractor shall attend any and all meetings at times required by Gilbane.



ATTACHMENT B: PRICE SCHEDULE

February 20, 2015

Barts Electric Company

Gilbane Federal Subcontract Number: JGFJV00003-006

Brief Project Description: Medical Clinic Renovation, Building # 160

Location: F.E. Warren AFB, Cheyenne, Wyoming

Subcontractor shall provide all Subcontract Work for the following single Firm Fixed Price of:

\$1,800,865.51 – One Million Eight Hundred Thousand Eight Hundred Sixty Five Dollars and Fifty One Cents

This single Subcontract Price shall cover all materials, equipment, labor, supervision, licenses, overheads, permits, profits, taxes, insurance, and bonds (if specified in the Cover Page or elsewhere in this Subcontract) and all other Subcontractor costs and fees of any kind incurred in performing the Work.

Provided, no part of the Subcontract Price shall be earned or due hereunder unless and until the Work (or an approved portion thereof if progress payments are to be paid under the Subcontract) is completely performed in full compliance with all Statement of Work and other requirements of this Subcontract. Further, all other preliminary and submittal requirements of this Subcontract, including those pertaining to pre-con meetings, submittals, invoicing, lien releases, inspections, certified payrolls, bonding, insurance, and time of payment, must be met before any payment shall be due. Retainage may be applicable to any payment. Absent formal signed modification of the Subcontract, no payment of any kind shall be made to Subcontractor except the Firm Fixed Price shown above.

Please see next page for the Subcontract Schedule of Values.



Subcontract Schedule of Values:

WBS Code	Item Description	Quantity	Unit	Electrical	Systems	Bond 1.34%	Total Price
A.00.0426050	Dept. 1 - Allergy	1	LS	\$19,457.16	\$9,988.55	\$394.57	\$29,840.28
A.00.0426050	Dept. 2 - Mental Health	1	LS	\$118,325.85	\$63,109.49	\$2,431.23	\$183,866.57
A.00.0426050	Dept. 3 - Commons	1	LS	\$26,302.12	\$13,053.22	\$527.36	\$39,882.70
A.00.0426050	Dept. 4 - Dental Clinic	1	LS	\$111,471.79	\$41,316.28	\$2,047.36	\$154,835.43
A.00.0426050	Dept. 5 - E&T	1	LS	\$12,267.22	\$13,620.75	\$346.90	\$26,234.87
A.00.0426050	Dept. 6 - Aerospace	1	LS	\$46,205.29	\$72,417.00	\$1,589.54	\$120,211.83
A.00.0426050	Dept. 7 - Lab	1	LS	\$28,153.53	\$16,117.89	\$593.24	\$44,864.66
A.00.0426050	Dept. 8 - Pharmacy	1	LS	\$129,683.75	\$73,710.97	\$2,725.94	\$206,120.66
A.00.0426050	Dept. 9 - Physical Therapy	1	LS	\$71,655.43	\$35,754.48	\$1,439.29	\$108,849.20
A.00.0426050	Dept. 10 - PRP	1	LS	\$16,753.76	\$59,136.77	\$1,016.93	\$76,907.46
A.00.0426050	Dept. 11 - Family Health	1	LS	\$18,093.63	\$11,350.63	\$394.55	\$29,838.81
A.00.0426050	Dept. 12 - Public Health	1	LS	\$37,731.92	\$48,467.18	\$1,155.07	\$87,354.17
A.00.0426050	Dept. 13 - Radiology	1	LS	\$180,531.23	\$24,063.33	\$2,741.57	\$207,336.13
A.00.0426050	Dept. 14 - TOPA	1	LS	\$17,655.81	\$41,770.31	\$796.31	\$60,222.43
A.00.0426050	Dept. 15 - RMO	1	LS	\$12,314.55	\$13,166.73	\$341.45	\$25,822.73
A.00.0426050	Dept. 16 - Medical Management	1	LS	\$145,588.27	\$20,885.15	\$2,230.74	\$168,704.16
A.00.0426050	Dept. 17 - DDR	1	LS	\$9,179.71	\$10,442.58	\$262.94	\$19,885.23
A.00.0426050	Dept. 19 - Command	1	LS	\$9,145.12	\$10,669.59	\$265.52	\$20,080.23
A.00.0426050	Dept. 20 - BEEE	1	LS	\$54,392.85	\$66,401.17	\$1,618.64	\$122,412.66
A.00.0426050	Building Grossing	1	LS	\$43,222.46	-	\$579.18	\$579.18
A.00.0426050	AHU Upgrades	1	LS	\$15,044.35	-	\$201.59	\$201.59
A.00.0426050	Mobile RAD Unit	1	LS	\$8,435.14	-	\$113.03	\$113.03
SUBCONTRACT TOTALS:				\$1,131,610.93	\$645,442.07	\$23,812.51	\$1,800,865.51



Subcontract No. JGFJV00003-006

**ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA**

SUBCONTRACT TERMS AGREED TO BY

(COMPANY NAME)

(SIGNATURE OF AUTHORIZED COMPANY REPRESENTATIVE)

(PRINTED NAME)

(DATE)



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

INDEX

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
1.	SCOPE OF WORK; SUBCONTRACTOR'S REPRESENTATIVE 2 Statement of Work, Related Work	
2.	SUBCONTRACT DOCUMENTS 2 Order of Precedence, Prime Contract, Flow Downs, Site Familiarity	2
3.	WORK SCHEDULE; REPORTS..... 3 Daily Reports, Suspension of Work by CONTRACTOR	3
4.	PAYMENT 4 Invoicing, Schedule of Values, Retainage, Title to Goods	4
5.	INSURANCE 8	8
6.	INDEMNIFICATION 12	12
7.	PATENTS, COPYRIGHT, ETC ₂ 13	13
8.	TAXES 13	13
9.	PROTECTION OF WORKERS AND PROPERTY..... 13	13
10.	PERMITS; COMPLIANCE WITH LAW; ETHICS, FCPA..... 14	14
11.	TECHNICAL DIRECTION; NOTIFICATION OF CHANGES; PRICE/ SCHEDULE REVISIONS 15	15
12.	CLAIMS 16 Waiver	16
13.	FORMAL DISPUTES..... 17 Attorneys' Fees	17
14.	ASSIGNMENT AND LOWER TIER SUBCONTRACTING 18	18
15.	TERMINATION 18	18
16.	WARRANTIES 20	20
17.	ADDITIONAL GENERAL PROVISIONS 21 Secrecy, Notices, Independent Contractor, Bonds, Further Acts, Term, Communications with Client, Non-Solicitation, DPAS, Import and Export Compliance, Anti-Human Trafficking, Execution	21



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

These Subcontract General Conditions apply to the Subcontract entered into by Gilbane Federal ("CONTRACTOR") and the Subcontractor shown on the Subcontract Order Cover Page(s) ("Subcontractor").

SECTION 1. SCOPE OF WORK; SUBCONTRACTOR'S REPRESENTATIVE

A. Scope. Subcontractor shall furnish professional personnel, labor, equipment, material, supplies, insurance, tools and supervision to diligently perform the procurement, construction and other work described in (and in strict accordance with) the Statement of Work attached ("Work"). Subcontractor shall promptly inform CONTRACTOR of any errors or discrepancies it discovers in any Statement of Work document including drawings or specifications, or waive the right to later contend that such errors or discrepancies increased its costs or otherwise negatively impacted its Work in any way. Unless otherwise provided in the Statement of Work, Subcontractor shall also coordinate its Work with that of other subcontractors at the Site, and attend any necessary Site meetings at CONTRACTOR's request. Subcontractor shall also comply with access requirements applicable to the overall construction or other project ("Project") which CONTRACTOR is performing for its Client.

B. Subcontractor's Representative. Subcontractor's Authorized Representative shall be fully acquainted with the Work, and shall have authority on behalf of such party to approve changes in the Work, or obtain execution of Change Orders, render decisions promptly, and furnish information expeditiously and in time to meet the time schedule for completion of the Work. Subcontractor's Authorized Representative may be changed by giving ten days written notice thereof to CONTRACTOR. Subcontractor's Authorized Representative must be approved by CONTRACTOR, such approval shall not be unreasonably withheld.

SECTION 2. SUBCONTRACT DOCUMENTS

A. Subcontract Documents, Order of Precedence. This Subcontract consists of those documents and Client requirements listed in the Subcontract Order Cover Page(s), together with those documents and requirements listed immediately below, all of which are hereby made a part of and incorporated into this Subcontract.

1. Subcontract Change Orders and written amendments to this Subcontract signed by both Subcontractor and CONTRACTOR
2. This Subcontract and Exhibits to it, i.e.:
 - 2.1 The Statement of Work (including any incorporated Drawings and Specifications, Project Submittals List and Health and Safety Requirement)
 - 2.2 The Subcontract Order Cover Page(s) to this Subcontract
 - 2.3 Scope of Subcontractor's Work
 - 2.4 Schedule of Subcontractor's Work
 - 2.5 Subcontract Price Schedule
 - 2.6 The CONTRACTOR Subcontract General Conditions (i.e., Sections 1 -17) and any provisions of the prime contract ("Prime Contract") between CONTRACTOR and CONTRACTOR's customer



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

("Client") which CONTRACTOR has flowed down and made applicable to this Subcontract, as required by law, regulation, or the Prime Contract itself

3. Specifications and addenda

4. Drawings

B. Conflicts. Any conflicts in the above-listed documents and other requirements comprising this Subcontract will be resolved by having the first - listed document or requirement taking precedence over the latter-listed document. If any provision contained within the above-listed documents imposes stricter liabilities on Subcontractor than the Prime Contract imposes on CONTRACTOR, the Prime Contract provision shall control.

C. Prime Contract Applicability. Subcontractor represents that it is familiar with and agrees to be bound to CONTRACTOR by the applicable terms and provisions of the Prime Contract (as above described), including in particular any applicable FAR and DFARS provisions attached and included in this Subcontract. In general, unless the resulting reading is patently illogical, FAR clauses and other provisions of the Prime Contract shall be read to substitute "CONTRACTOR" for "Client" or "Government" and "Subcontractor" for "Contractor" wherever such terms appear. Provided however, no obligation owing from CONTRACTOR to Client, nor any benefit provided from Client to CONTRACTOR, by virtue of the Prime Contract, shall inure to the benefit of Subcontractor, unless specifically granted in the body of this Subcontract, or required by law to so inure. Any uncertainty as to whether any particular Prime Contract provision is applicable hereto shall be resolved by CONTRACTOR in consultation with the Client.

SECTION 3. WORK SCHEDULE; REPORTS

Subcontractor may not perform any Site work until CONTRACTOR issues a written Notice to Proceed.

Subcontractor shall fully complete all Work on or before the earliest of: 1) any completion date(s) stated in the Cover Page(s), 2) any completion date(s) specified in any Statement of Work or Schedule attached hereto or incorporated by reference herein, or 3) any Schedule incorporated in the Prime Contract. Subcontractor shall coordinate its Work with any other work to be done on the Client Project or Site by any other contractors, designers, architects, engineers or subcontractors whose work may overlap or conflict with the Work under this Subcontract. Time is of the essence in the performance of the Work. Any extension of any completion date(s) or any portions thereto may only be granted by CONTRACTOR in writing, properly executed and definitively stating that an extension is granted. Unless otherwise agreed in writing, Subcontractor shall complete any required submittal due (e.g., Permits, Work Plan, 100% Design Documents, etc.) ten days before CONTRACTOR is required by the Prime Contract to submit it under the Prime Contract.

CONTRACTOR shall impose as the Subcontract measure of damages for delays in the Work any liquidated delay damages specified in the Prime Contract, if Client imposes such liquidated delay damages on the CONTRACTOR for the Work and if such delay is attributable to the Subcontractor. In such case, such liquidated delay damages will begin to accrue and end in accordance with the Prime Contract. Subcontractor agrees that such liquidated delay damages are fair, utilized to compute an amount otherwise difficult to compute, and not a penalty. Notwithstanding anything to the contrary in this Agreement, under no circumstance shall Subcontractor's liability arising out of or in any way in connection with this Agreement exceed an amount equal to CONTRACTOR's liability under the Prime Contract and Task Order if CONTRACTOR had self-



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

performed Subcontractor's Scope. Subcontractor shall indemnify CONTRACTOR against any Liquidated Damages or direct damages asserted by Client against CONTRACTOR related to schedule delays arising out of or resulting from the performance of the Subcontractor Scope subject to granting Subcontractor the right to defend against the Client's act or claim and/or to submit a Claim. In addition, Subcontractor will be liable for any increase in CONTRACTOR's project management and support costs ("GCs") that result from delays caused by Subcontractor and that are not paid by Client. Except as set forth in this agreement, under no circumstances shall the Parties have any liability to each other for consequential or indirect damages, including but not limited to loss of use or lost profits.

CONTRACTOR may also require Subcontractor to submit to CONTRACTOR on a daily, weekly or less frequent basis, on a form or in a computer format using software approved by CONTRACTOR and reasonably convenient to Subcontractor, reasonably required information regarding Work progress, number of employees utilized, budget, cost and/or forecast information, type of work performed, critical path scheduling, equipment and materials utilized, and percentage of work completed.

SECTION 4. PAYMENT

A. Subcontract Compensation in General, Electronic Payment.

1. In General. CONTRACTOR will pay Subcontractor amounts earned for Work satisfactorily performed, after submission by Subcontractor of complete and accurate invoicing and supporting documentation, as specified in this Subcontract and any executed modifications hereto, within seven (7) days after CONTRACTOR's receipt of payment from CONTRACTOR's Client in respect of such Work.

2. Electronic Payment. Subcontractor shall accept all payments made hereunder by Electronic Funds Transfer (EFT) through the Automated Clearing House (ACH) Network or by Wire Transfer. Subcontractor shall provide CONTRACTOR (at the address described in **Section 4.B.2** below) with fully usable EFT payment information (including Bank Name and Address, Bank Account Name and Number, ABA Routing Number, SWIFT Code, etc.) no later than fifteen (15) days prior to submission of Subcontractor's first invoice.

B. Submission, Format, Contents and Amounts of Invoices; SSOV.

1. Timing and Format, Pay Request Form. Unless otherwise directed by CONTRACTOR in writing: 1) Subcontractor shall submit its invoices to CONTRACTOR monthly **on or before the 25th calendar day** of the month; and 2) Where **Invoicing Instructions** are attached hereto: a) All Subcontractor invoices shall be in the format of the **Pay Request Form** included in such Instructions, and b) Subcontractor shall otherwise comply with such Instructions. Subcontractor's prompt submission of compliant invoices is a material requirement of this Subcontract. Subcontractor acknowledges that CONTRACTOR will not ordinarily process Subcontractor invoices submitted on the 26th or later day in any given month within CONTRACTOR's current monthly pay cycle. Invoices electronically transmitted to CONTRACTOR on or before midnight local time at the site shall be deemed submitted on the 25th. If so indicated on the Subcontract Order Cover Page(s), or otherwise later directed by CONTRACTOR in writing, Subcontractor may be required to invoice CONTRACTOR more frequently (e.g., once every two weeks).



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

2. Address for Submission, Taxes. All Subcontractor invoices shall be submitted to the CONTRACTOR address shown on the Subcontract **Cover Sheet**. Taxes of any kind, paid by Subcontractor and/or charged and collected by Subcontractor shall be shown as separate line items on all invoices.

3. Fixed Price. Unless clearly indicated in writing to be Cost Reimbursable Work or Time and Materials Work in the **Price Schedule** or elsewhere in this Subcontract, all Work performed hereunder shall be deemed to be Fixed Price (lump sum) All such Work may be subdivided into discrete sub-tasks or pay items for invoicing and payment purposes. For all Fixed Price Work, CONTRACTOR shall pay an amount calculated as follows: [Percent Complete of Work (i.e. percent earned) multiplied by total lump sum amount due (as shown on the **Cover Page** and/or **Price Schedule**) for the Work or Work sub-task or pay item] less all amounts already paid for Work and less retainage in accordance with the Subcontract. The "Percent Complete" for any Subcontract Work (including any discrete sub-tasks) shall be as determined by CONTRACTOR in consultation with Subcontractor and Client and shall be binding upon Subcontractor in the absence of bad faith.

4. Stored Materials. Unless otherwise provided in the Subcontract Documents, and if approved in advance by Client, applications for payment may include materials and equipment not incorporated in Subcontractor's Work but delivered to and suitably stored at the Project site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to Client and CONTRACTOR to establish Client's title to such materials and equipment, or otherwise to protect Client's and CONTRACTOR's interest including transportation to the Project site.

5. Supplemental Schedule of Values. Upon CONTRACTOR request at any time, Subcontractor shall promptly cooperate with CONTRACTOR to negotiate and incorporate into the Subcontract a new or further subdivision and breakdown of the Work for billing and payment hereunder. Such subdivision is referred to herein as a Supplemental Schedule of Values ("SSOV"). Any such SSOV shall include a detailed listing of tasks and sub-tasks comprising the Work, together with dollar values to be attributed to each, which shall become the basis for measurement and payment for progress toward the completion of the Work, subject to all the other provisions hereof. No SSOV shall by itself serve to reduce, increase or otherwise adjust the total Subcontract Price or any prices shown for line items or other price breakdown as stated in the Subcontract and any subsequent Modifications. Such SSOV may, if mutually agreed in writing, incorporate specific performance milestones to be used for payment purposes.

6. Lower-Tier Subcontractor Payments. If the parties have agreed or if CONTRACTOR in its sole discretion has elected (in accord with **Section 4.E** below) to issue joint checks to Subcontractor and any of its lower-tier subcontractors and suppliers and/or pay such of Subcontractor's subcontractors and suppliers directly, Subcontractor's invoices shall show as segregated amounts the amounts to be so directly paid to such sub-subcontractors and sub-suppliers.

7. Final Invoices. Upon full and final conclusion of the Work, and/or any termination of this Subcontract, Subcontractor shall prepare a final invoice. A final invoice will be conspicuously labeled as Final, will be treated as prescribed above for other invoices and will also list all invoices previously tendered. With a final invoice, Subcontractor shall provide a Final Claim Release (indemnifying the Client and CONTRACTOR against all claims arising out of this Subcontract, including lower tier subcontractor and supplier claims), Claim Releases from all Subcontractor's subcontractors and suppliers, an agreed to and signed Schedule of Values for construction work, and any ongoing Statement of Warranty, all on forms provided or approved by CONTRACTOR, all duly signed by an authorized representative of Subcontractor. Subcontractor shall provide closeout documentation as reasonably



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

requested by CONTRACTOR. Final payment for the Subcontract will be made after CONTRACTOR reviews and accepts such final invoice. (Such final payment will include payment of any retainage and withholding amounts which are then payable for Work that has been fully completed, net of any amount withheld for ongoing warranty or Subcontract performance deficiencies.)

C. Submittals Required Prior to Payment.

As a condition to CONTRACTOR's becoming liable to make any Subcontract payment hereunder, Subcontractor must timely take all administrative and other actions and provide all documents required by this Subcontract, including but not limited to the following. **Failure to fully comply with these requirements shall result in CONTRACTOR's rejection and/or non-payment of invoices.**

1. Payment/Claim Releases. All invoices shall include conditional and unconditional interim (progress) and final Payment Claim Releases (Attachment E to the subcontract) as requested by CONTRACTOR (or as may be specified in any **Invoicing Instructions** attached hereto), and duly executed by both Subcontractor and its lower tier-subcontractors and vendors of all tiers. Subcontractor shall also provide any pertinent information related to the Work (e.g. related to second tier vendor claims, accidents, etc.) as reasonably requested by CONTRACTOR. (Further requirements for final invoices are stated in **Section 4.B.7** above.)

2. Insurance Certificates, Bonds, Etc. Subcontractor must timely provide fully compliant insurance certificates (including any required supplemental endorsements, coverage forms or other compliance documentation required by GILBANE FEDERAL), performance and payment bonds, licenses and all other documents as required elsewhere in this Subcontract prior to receiving any payment hereunder.

D. Retainage.

CONTRACTOR shall retain from payment on all of Subcontractor's invoices the percentage amount stated on the Subcontract Order **Cover Page**. Retainage shall be released upon satisfactory performance of the Work and acceptance by the Client in accordance with the Subcontract

E. Withholding, Failure to Pay Lower Tiers, Reasons for Non-Payment.

In case of any dispute between the Client and the CONTRACTOR due to failure of Subcontractor to properly and timely perform the Work, and/or to otherwise fail to comply with any provision of this Subcontract, CONTRACTOR may: 1) withhold such further amounts from payment as it deems reasonably necessary to protect its interests and/or 2) issue joint checks to Subcontractor and its subcontractors and suppliers and/or pay Subcontractor's lower-tier subcontractors and suppliers directly, and in either case credit such amounts so paid in full to any amounts owed Subcontractor and/or 3) make a claim against the bond. Where CONTRACTOR has so paid any amount to Subcontractor's lower-tier subcontractors and suppliers, Subcontractor hereby releases and agrees to indemnify CONTRACTOR and its affiliates and clients from any later claim that Subcontractor has not itself been paid such amount. Further, Subcontractor shall be deemed to have fully assigned and transferred to its so-paid lower-tier subcontractors and suppliers any claim Subcontractor may have had against CONTRACTOR for payment under this Subcontract to the full extent of the amount so paid.

In addition to its above rights, CONTRACTOR may decline to approve any Subcontractor invoice in whole or in part because of any of the following: defective Subcontract Work, improper invoice format of the Subcontractor, inadequate invoice information of the Subcontractor, lower tier subcontractor / supplier claims or liens or other third party claims filed, damage to CONTRACTOR, the Client, or another contractor working at the Project Site,



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

failure to timely provide , certificates of insurance, bond, or other required submittal or document, breach of Health and Safety or EEO requirements.

Except in cases where the Client has withheld payment on CONTRACTOR's invoices without notice due to Subcontractor's failure to meet an obligation of this Subcontract, CONTRACTOR shall notify Subcontractor of CONTRACTOR's intent to withhold payment and provide Subcontractor ten (10) days in which to respond or cure the failure.

When the grounds for withholding payment have been removed, payment shall be made for amounts withheld because of them.

F. Effect of Payment.

No payment made under this Subcontract, including final payment, shall be construed to be conclusive evidence of the performance of this Subcontract, either wholly or in part, or to be an acceptance of defective work or improper materials, nor shall entrance into and use of the Project by the Client or by CONTRACTOR constitute acceptance of the Work or any part thereof. Further, no act by CONTRACTOR shall be deemed to be an acceptance of the Work unless and until CONTRACTOR's Client has fully accepted the Work. Neither CONTRACTOR nor Client shall have any liability to Subcontractor of any kind other than the duty to make the payments described in this **Section 4.**

CONTRACTOR shall not be obligated to pay Subcontractor for any costs incurred, fee due, or any other amount in excess of any applicable Fixed Price, Ceiling Price or Not-to-Exceed amount specified in any applicable Price Schedule (or in a modification to this Subcontract duly executed by both parties.), unless the Client approves recovery of such additional cost or unless such excess amount has been accrued due to reasons attributable to sole negligence of the CONTRACTOR.

G. Title to Goods.

Title to all goods and/or personal property provided by Subcontractor hereunder shall pass to CONTRACTOR (or to CONTRACTOR's Client, if so required by the Prime Contract) immediately upon the earliest of: 1) installation and/or incorporation of such goods into the Project; or 2) upon payment therefor.

H. Audit and Indemnity.

If at any time any audit determines that Subcontractor has been overpaid for any Work, or if the Client determines at any time that CONTRACTOR and/or Subcontractor has been overpaid for the Work, whether because of defective pricing (as such term is used in the Federal Truth-in-Negotiations Act) or otherwise, Subcontractor will refund such excess to CONTRACTOR no later than twenty days after notice to that effect CONTRACTOR may conduct a compliance audit of Subcontractor for purposes of determining compliance with **Section 10** and other provisions hereof. Such audits may include document review, on-site visits, and Subcontractor employee and sub-subcontractor interviews, and may encompass review of direct and indirect ("corporate") functions. Information and material obtained from such audit may be provided to Client personnel. Subcontractor shall include a substantially identical provision in all lower tier subcontracts it issues in support of this Subcontract.

SECTION 5. INSURANCE



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

Before the earlier of commencement of its Work, entering the Project site (at any time), or ten (10) days after signing this Agreement, Subcontractor shall provide the insurance required in this Section with insurers rated (A-) or better and licensed in the Project jurisdiction. If the Project is insured by a wrap-up insurance program, then Subcontractor should refer to the Project wrap-up manual (incorporated herein as a Contract Document) for any additional insurance obligations. All insurance required of Subcontractor in this Section are only minimum requirements, denominated in US Dollars, and required to the extent permitted by law. The insurance required in this Section shall be maintained continuously until final payment is made to Subcontractor for its Work except that any commercial general liability, excess liability, pollution liability and professional liability insurance required in this Section shall be further maintained continuously until the later of the period of the statute of limitations or the statute of repose for the types of claims covered by the particular policy type. However, if any professional liability insurance provided in accordance with this Section is provided on a project specific basis, then coverage shall be placed until final payment is made to Subcontractor and shall include an extended reporting period for a term no less than five (5) years after such final payment. Subcontractor shall require its subcontractors of all tiers to meet the same insurance obligations as are required of it in this Agreement, unless a waiver is provided by GILBANE FEDERAL with respect to limits of insurance. GILBANE FEDERAL reserves the right to consider any insurance not in compliance with this Section as a material breach of contract.

It is solely Subcontractor's obligation to ensure that it provides all insurance coverage as required by US state and federal laws, the Contract Documents and the laws of any other jurisdiction applicable to its Work – and that it has included all relevant costs. Subcontractor waives any right of action that it has against GILBANE FEDERAL for premiums, claims, audits, penalties or other costs incurred as a result of Subcontractor's failure to provide such required insurance.

(a) Workers Compensation and Employer's Liability. Subcontractor shall provide workers compensation and employer's liability insurance in any jurisdiction(s) where the Work is being performed. Subcontractor shall require any firm providing labor services to it to meet all the same workers compensation and employer's liability coverages as are required of Subcontractor in this Section. If Subcontractor is providing labor services to GILBANE FEDERAL, then Subcontractor shall name GILBANE FEDERAL under an alternate employer endorsement to its workers compensation coverage. Subcontractor shall also provide workers compensation and employers liability insurance coverage under the following US Federal Workers Compensation and Employers Liability Acts (provided on an 'if any' basis if no current exposure) using the ISO endorsements identified below (or their equivalents):

Longshore and Harbor Workers Compensation Act	WC 00 01 06A
Outer Continental Shelf Lands Act	WC 00 01 09B
Defense Base Act	WC 00 01 01A
Merchant Marine Act "Jones Act"/Death on High Seas Act/ Maritime Liability Law	WC 00 02 01A

(b) Commercial General Liability ("CGL"). Subcontractor shall provide CGL coverage equivalent to the most recent edition of the ISO CG 00 01 occurrence form and shall include coverage for explosion, collapse and underground hazards (the "XCU" hazards), contractual liability (for both ongoing and completed operations), contingent liability, premises-operations, products-completed operations, personal and advertising injury, and claims for damages because of injury to, or destruction of, tangible property including loss of use resulting thereof. The CGL insurance shall include insured contract coverage including indemnity for damages or injuries to the Subcontractor's employees(s) and shall not exclude any Additional Insured's ("Additional Insured" as defined in paragraph (h)) claims pertaining to damages or injuries to the Subcontractor's employee(s). The coverage limits



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

required are \$1 million per occurrence, \$2 million general aggregate and \$2 million products-completed operations aggregate.

(c) **Business Automobile Liability Policy (“BAP”).** Subcontractor shall provide BAP insurance to include coverage for claims for damages due to bodily injury or property damage arising out of the Work and due to the ownership, maintenance, or use of any owned, non-owned or hired auto. If Subcontractor will be hauling or transporting any hazardous materials, then this insurance shall include the most current version of the ISO CA 99 48 broadened pollution liability endorsement, or its equivalent, and the MCS-90 shall be attached to the policy. The coverage limits required are \$1,000,000 combined single limit for each accident.

(d) **Excess or Umbrella Liability.** Subcontractor shall provide occurrence-based follow-form excess (or umbrella) liability insurance which shall provide coverage excess over any employer’s liability, CGL and BAP insurance required in this Section and which shall include coverage limits of \$5,000,000 each occurrence and \$5,000,000 annual aggregate. However, if Subcontractor’s Work requires use of a crane (*as defined by OSHA 1926.1400 (a)*), then unless higher limits are required by law, the following minimum limits apply:

1. Tower Cranes: Subcontractor shall provide excess (or umbrella) liability coverage of at least \$25,000,000 per occurrence/\$25,000,000 in aggregate.
2. All other cranes not considered Tower Cranes: Subcontractor shall provide excess (or umbrella) liability coverage of at least \$10,000,000 per occurrence/\$10,000,000 in aggregate.

Subcontractor agrees to adhere to any procedural guidelines required by GILBANE FEDERAL with respect to evidencing insurance coverage applicable to any crane including the operation of it.

(e) **Professional Liability.** Subcontractor shall provide professional (“errors and omissions”) liability insurance if its Work includes professional services. Professional services for purposes of this Section include, but are not limited to, performing: architecture, engineering, landscape architecture, land surveying or planning, geological investigation, interior design/space planning, preparation and signing or stamping of drawings, maps, surveys or construction specifications, consulting, or design and development of computer software, programs or websites by the Subcontractor or by subcontractors on behalf of the Subcontractor. The retroactive date shall precede the start of any Work. The minimum coverage limits required are \$1,000,000 each claim and \$1,000,000 annual aggregate.

(f) **Contractor’s Pollution Liability.** Subcontractor shall provide contractor’s pollution liability insurance if Work includes pollution services. Pollution Services for purposes of this Section include, but are not limited to, performing: investigation and characterization of contamination of land, groundwater or structures, demolition of structures, abatement of lead paint, asbestos or mold, remediation of contaminated soil or groundwater including transportation and disposal of contaminated media, installation or removal of underground storage tanks, or any storage, transportation or disposal of materials that are hazardous or regulated under environmental laws by the Subcontractor or by subcontractors on behalf of the Subcontractor. If any such scope of work includes mold/fungus remediation, then the contractor’s pollution liability insurance shall include mold/fungus liability coverage in the amount of the contractor’s pollution limits required herein. The retroactive date for this coverage shall precede the start of any Work. The minimum coverage limits required are \$5,000,000 each occurrence and \$5,000,000 annual aggregate.

(g) **Contractor’s Equipment; Property Insurance; Riggers Liability.** Subcontractor shall maintain property insurance on a coverage form equivalent to the most recent version of ISO special cause of loss form and including coverage for flood, named storm, earthquake, war and terrorism which covers: (i) its tools, equipment and other property, whether owned, rented or borrowed, the capital value of which is not intended



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

to be incorporated into the Work and (ii) property intended to be incorporated into its Work during the full course of any transit until it reaches the Project site including coverage while stored at any location away from the Project site (and further until completion and acceptance of the entire Work by the Client if Subcontractor required to retain risk of loss in accordance with Section 4.G. above). Riggers liability insurance shall be provided if property is being lifted, moved, rigged or otherwise handled by a crane (*as defined by OSHA 1926.1400 (a)*) in an amount equal to at least 100% replacement cost of the greatest replacement value of property being lifted, moved, rigged or otherwise handled by the crane at any one time. To the extent that Subcontractor carries any type of property insurance applicable to its Work (including any installation floater), such insurance shall include GILBANE FEDERAL and Client as a loss payee. Any property insurance carried by Subcontractor in accordance with this paragraph shall be primary insurance without any contribution from any other property insurance provided by GILBANE FEDERAL and/or Client, including builder's risk insurance, which is available to Subcontractor.

(h) Additional Insured. For purposes of this Section "Additional Insureds" shall mean (i) GILBANE FEDERAL (and if GILBANE FEDERAL is part of a joint venture then the joint venture and each of the joint venture partners and if GILBANE FEDERAL is part of an LLC then the LLC and each of its members are additional insureds too), (ii) Client, (iii) both Client and Gilbane Federal officers, directors and employees, (iv) any person or entity requested by GILBANE FEDERAL or Client and (v) and any other person or entity required to be added as an additional insured by the Contract Documents. The Additional Insureds shall be named as additional insureds to Subcontractor's CGL (for both ongoing and completed operations), BAP, excess liability, umbrella liability, watercraft liability, aircraft liability, and pollution liability insurance of any kind. Such additional insured coverage shall be provided on a primary basis without contribution from any other insurance, including self-insurance, afforded to the Additional Insureds. Any additional insured coverage required in this paragraph shall remain in effect after Gilbane Federal acceptance of Subcontractor's Work and continuously thereafter from the date of such acceptance until the later of the statute of limitations or the statute of repose for the type of claims covered by the particular policy type. The CGL additional insured coverage required in this paragraph shall be provided on the most recent versions of the ISO forms CG 20 10 and CG 20 37, or their equivalent(s), unless an alternative is approved by GILBANE FEDERAL. Any of Subcontractor's excess or umbrella liability policies shall be expressly endorsed to state that coverage for the Additional Insureds is primary and that the insurer will not seek contribution from any other insurance available to the Additional Insured.

(i) Self-Insured Retentions (SIR's); Deductibles. Any costs not covered due to self-insured retentions ("SIR's") or deductibles applicable to any insurance required of Trade Contractor by this Trade Contractor Agreement are the sole responsibility of the Trade Contractor. Trade Contractor could be disqualified from the Project if any SIR is deemed by the Construction Manager to be excessive. Trade Contractor shall be considered a self-insurer with respect to its additional insured obligations under paragraph (h) for any self-insured retention or deductible applied by its insurer to any of the Additional Insureds.

(j) Certificates of Insurance. Subcontractor shall evidence its compliance with the insurance obligations in the Contract Documents through the issuance of certificates of insurance to GILBANE FEDERAL. Certificates evidencing CGL coverage shall include a copy of the additional insured coverage being provided to the Additional Insureds under the CGL. Gilbane Federal acceptance of any certificate of insurance or coverage provision in no way waives Gilbane Federal right to later assert that Subcontractor did not provide insurance in conformance with the Contract Documents. If Subcontractor fails to comply with the provisions in this Section, then GILBANE FEDERAL may withhold monthly progress payments and purchase the insurance on behalf of the Subcontractor, at Subcontractor's expense. Upon request, Subcontractor shall



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

provide GILBANE FEDERAL with a certified copy of any insurance policy applicable to coverage required of Subcontractor in the Contract Documents. Subcontractor shall provide immediate written notice to GILBANE FEDERAL and Client upon the reduction of any limits or coverage required of it in the Contract Documents.

(k) **Watercraft Liability Insurance.** As to any vessel, barge, boat or other watercraft (each considered a “watercraft” for purposes of this Section) which is owned, leased or borrowed and which is “used” for purposes of performing any part of the Work, the Subcontractor shall provide the following insurance:

- (1) Protection and Indemnity Insurance insuring Subcontractor from all claims, suits, obligations, liabilities and damages (including attorneys’ fees) arising out of actual or alleged bodily injury or property damage in the combined single limit amount of no less \$1,000,000 per occurrence, unless such watercraft is greater than 35 feet in length, in which case \$5,000,000 per occurrence is required;
- (2) Hull Coverage for the full replacement value of such watercraft; and
- (3) Vessel Pollution Liability insurance provided during the term of the Work and continuously for one year thereafter in an amount of no less than \$1 million per occurrence or claim including coverage for claims, suits, obligations, liabilities and damages (including attorneys’ fees) arising out of actual or alleged bodily injury or property damage, including clean-up costs, occurring in connection with the operations of any watercraft engaged in the Work, or otherwise relating to Subcontractor’s performance under this contract.

For purposes of this Section, a watercraft “used” for purposes of performing any part of the Work includes, but is not limited to, any operation, entrustment to others, maintenance, loading or unloading of a watercraft as well as the supervising, hiring, employment, training or monitoring of others engaged in any operation, maintenance, loading or unloading of a watercraft. The general liability exclusion for watercraft shall be removed whenever a watercraft is used in accordance with this Section.

(l) **Aircraft Insurance.** As to any aircraft which is owned, leased or borrowed and which is “used” for purposes of performing any part of the Work, the Subcontractor shall provide the following insurance:

- (1) Aircraft Liability Insurance (including Passenger Liability insurance) insuring Subcontractor from all claims, suits, obligations, liabilities and damages (including attorneys’ fees) arising out of actual or alleged bodily injury or property damage in the combined single limit amount of no less \$3,000,000 per occurrence, unless such aircraft carries more than six (6) passengers, then \$5,000,000 per occurrence is required; and
- (2) Aircraft Hull Insurance for the full replacement value of such aircraft.

For purposes of this Section, an aircraft “used” for purposes of performing any part of the Work includes, but is not limited to, any operation, entrustment to others, maintenance, loading or unloading of an aircraft as well as the supervising, hiring, employment, training or monitoring of others engaged in any operation, maintenance, loading or unloading of an aircraft. The general liability exclusion for aircraft shall be removed whenever an aircraft is used in accordance with this Section.

(m) **Waiver.** Subcontractor agrees to waive any right of action against (i) GILBANE FEDERAL (and if GILBANE FEDERAL is part of a joint venture then the joint venture and each of the joint venture partners and if GILBANE FEDERAL is part of an LLC then the LLC and each of its members are provided a waiver of subrogation too), (ii) Client, (iii) both Client and Gilbane Federal officers, directors and employees, (iv) any person or entity requested by GILBANE FEDERAL or Client and (v) and any other person or entity requiring a waiver of subrogation by the Contract Documents. (collectively the “Waiver Parties”) for recovery of loss and/or damages to the extent covered,



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

or that should have been covered, by Subcontractor's insurance required under the Contract Documents. Such waivers shall also apply to any other insurance applicable to Subcontractor's Work for the Project.

SECTION 6. INDEMNIFICATION

To the fullest extent allowed by law, Subcontractor shall be solely responsible for and shall indemnify, save, and hold harmless (and, at CONTRACTOR's option, defend) CONTRACTOR, Client and their affiliates and employees from and against any and all claims, demands, suits, actions, recoveries, judgments, attorneys' fees incurred and costs and expenses in connection therewith on account of any loss of life, injury to person, economic loss or damage to property of any person, agency, corporation, or government entity, which shall arise out of, in the course of, or as a direct or indirect consequence of 1) any of the negligent, deliberate, otherwise tortious or otherwise at-fault acts or omissions of Subcontractor, its employees, agents, suppliers or subcontractors, 2) the performance of the Work, 3) any personal injuries or other losses suffered by Subcontractor's employees, consultants or subcontractors, or 4) Subcontractor's failure to comply with any provision of this Subcontract or any regulation or provision of law. Subcontractor's liability for such indemnity shall continue after the termination of the Subcontract. This indemnification obligation is not limited by, but is undertaken in addition to, the insurance obligations contained in this Subcontract.

Without limiting the foregoing in any way, this indemnification specifically applies to losses in any way caused by: 1) environmental damage, such as those caused by a release of hazardous substances, 2) defective cost or pricing data supplied by Subcontractor, or other violation of the Federal Truth in Negotiations Act, 3) any defective Work supplied by Subcontractor, or breaches of any warranty by Subcontractor, regardless of when such defects or breaches arise, 4) any reductions in amounts otherwise due to CONTRACTOR from the Client, 5) regulatory fines and penalties, 6) costs incurred by CONTRACTOR as a result of Subcontractor's failure to comply with this Subcontract, including but not limited to, the cost of re-performing any other services or re-providing any other goods previously provided by CONTRACTOR or others, which were impacted by Subcontractor's failure, 7) organizational and other conflicts of interest in which Subcontractor is in any way involved, 8) material delays, interference with other subcontractors, back charges by the Client for delays, 9) any breach of the provisions of **Section 17.J.** hereof (Import and Export Compliance), and/or 9) damages or other payments of any kind whatsoever required to be paid by CONTRACTOR to the Client or other third party.

CONTRACTOR shall indemnify Subcontractor from claims, demands, suits, actions, recoveries, judgments, incurred and reasonable costs and expenses arising directly out of any loss of life, injury to person, or damage to property of any person, agency, corporation, or government entity, which shall arise out of, in the course of the sole negligence of CONTRACTOR. Responsibility for all damage to the work in progress, facilities, and property on the Project Site shall remain with the Subcontractor until the completed work is accepted by Contractor's Client.

SECTION 7. PATENTS, COPYRIGHT, ETC.

Except for claims arising out of patented or copyrighted articles required by CONTRACTOR in writing to be provided by Subcontractor, Subcontractor shall defend all suits or claims and shall indemnify CONTRACTOR and the Client from liability of any nature, including costs and expenses, for or on account of infringement of any United States or foreign patents or copyrights by reason of the nature, form or condition of any design, drawing, material, machine, process or other article required or supplied by Subcontractor in the performance of this Subcontract or by reason of use or sale by CONTRACTOR of any such article for a purpose reasonably foreseeable by Subcontractor. All patent, copyright and other intellectual property rights to any writings, designs, ideas or any



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

other item produced by Subcontractor as part of the Work shall be the sole property of CONTRACTOR (or, at CONTRACTOR's option, the Client).

SECTION 8. TAXES

Each Party shall be fully responsible for relevant taxes on its Project-related activities imposed by the current applicable legislation. Subcontractor shall obtain any exemptions required from any tax authorities where the Work is performed.

Subcontractor shall use its best efforts to apply for and obtain any sales, hazwaste, VAT or other tax exemption which may be available as to any of the Work.

SECTION 9. PROTECTION OF WORKERS AND PROPERTY

Subcontractor shall take all necessary precautions for the safety of its and other employees at its offices and on any Site, and shall comply with all applicable provisions of Federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Subcontractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against the hazards created by such construction. All of Subcontractor's employees shall be appropriately trained for the Work (e.g., OSHA 40 hour hazwaste training conducted pursuant to 29 CFR 1910.120 if required), and shall comply with (and sign if requested by CONTRACTOR) any applicable CONTRACTOR and/or Government Site Health and Safety Plan. Subcontractor shall also provide its own Health and Safety Plan if: 1) requested by CONTRACTOR, 2) required by the unusual or significant hazards of the Work, and/or 3) if required by the Prime Contract. Subcontractor shall comply with the strictest requirements of its 'own or CONTRACTOR's Health and Safety Plan, including US Army Corps of Engineers EM385 requirements. (Despite CONTRACTOR's providing any such Plan, Subcontractor shall be fully responsible for the health and safety of its employees and those other persons affected by its operations, and CONTRACTOR in no way represents that any CONTRACTOR- or Government-provided Health and Safety Plan will be adequate to fully protect Subcontractor's employees and sub-subs from the hazards of Subcontractor's Work.) Any violation of these health and safety requirements shall be a material breach of this Subcontract.

Accident Reporting: In addition to any other requirements imposed by other provisions of this Subcontract, any applicable Health and Safety Plan, and/or the Prime Contract, Subcontractor shall immediately (within 2 hours of the accident) report (by e-mail and telephone) any accident on the Site (or otherwise concerning the Project) involving any death, injury (other than minor first aid incidents) or property damage over \$100 to CONTRACTOR's Site Supervisor, Project Manager and Health and Safety representative. Subcontractor will further fully and promptly cooperate with CONTRACTOR in providing all needed and/or requested information related to all accidents for all Defense Base Act, Workers Compensation and/or other filings CONTRACTOR is required to make.

Subcontractor shall promptly remove from the Site and the Work any employee who is determined by CONTRACTOR to be unsafe, unprofessional or otherwise unsuitable to assist in the Work. Subcontractor shall perform no commercial activities (other than the Work) on the Site.



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

Subcontractor shall continuously maintain adequate protection of all its Work and the Site from damage, secure the Site and its Work from theft, fire, and vandalism, and shall protect Government's and CONTRACTOR's property from injury or loss arising in connection with this Subcontract. Subcontractor shall adequately protect adjacent property. Subcontractor shall cooperate with and defer to all other contractors on the Site, including CONTRACTOR's other subcontractors. Subcontractor shall at all times keep the Site in a neat, clean and orderly condition. Upon completion of the Work, Subcontractor shall remove all debris, rubbish and materials (except those incorporated in the Work) and fully restore the Site to a neat, clean and safe condition as approved by CONTRACTOR.

SECTION 10. PERMITS; COMPLIANCE WITH LAW; ETHICS; FCPA

A. Permits & Laws. Subcontractor shall obtain all required licenses, permits, inspections, and registrations, and shall obey and abide by all applicable laws, regulations, ordinances, and other rules of the United States of America, the country in which the Project is located and any other duly constituted public authority, which are applicable to the Subcontract. In particular, Subcontractor shall at all times familiarize itself, and comply, with: 1) all applicable environmental laws, including those pertaining to hazardous waste, and 2) the US Iran Sanctions Act, the US Comprehensive Iran Sanctions, Accountability and Divestment Act, the US Dept. of Treasury's Office of Foreign Assets Control (OFAC) regulations, FAR 25.7 and other US regulations, which prohibit any and all shipment of Project equipment and goods through and/or from Iran.

B. Ethics. Subcontractor recognizes the importance of avoiding kickbacks, payment of gratuities, and organizational and other conflicts of interest with regard to all its Work, as may be required by the Prime Contract. Except as expressly exempted by the FAR: 1) Subcontractor will at all times maintain in place a Government Contract Compliance Program as required by FAR 52.203-13 & 14, which shall, as part of ensuring compliance with this provision, include written policies and procedures, self-reporting provisions, and employee training, and 2) Subcontractor shall include a substantially identical provision in all subcontracts in support of this Subcontract.

C. U.S. Foreign Corrupt Practices Act (FCPA) Requirements. In the conduct of all business under this Subcontract, and with regard to any funds, assets, or records relating thereto, Subcontractor will not offer, pay, give, or promise to offer, pay, or give, or authorize the payment or gift of, any money or thing of value:

1. to any official of any foreign Government or to any foreign official (a) (i) to influence any acts or decisions of such official in his/her official capacity, (ii) to induce such official to do or omit to do any act in violation of the lawful duty of such official, or (iii) to secure any improper advantage; or (b) to induce such official to use his/her influence with any foreign Government or instrumentality of any such Government to affect or influence the decision of such Government or instrumentality in order to assist CONTRACTOR or Subcontractor in obtaining or retaining business or directing business to CONTRACTOR or Subcontractor.
2. to any political party or candidate for public office for any such purpose described in **Section 10.C.1** herein above; or
3. to any person, if the Party knows or has reason to know that such money or thing of value will be offered, promised, paid, or given directly or indirectly to any official, political party, or candidate for any such purpose described in **Section 10.C.1** herein above.

For purposes of this **Section 10.C**, the term "official" means any officer or employee of any foreign Government or of any Government or any department, agency, or instrumentality thereof, or of a public international organization,



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

or any person acting in an official capacity for or on behalf of any such Government or department, agency, or instrumentality, or public international organization.

Subcontractor shall request guidance and training from CONTRACTOR if Subcontractor is not fully familiar with the requirements of the FCPA.

Upon CONTRACTOR request at any time, Subcontractor shall execute a formal sworn certificate to the effect that, through the date of the certificate, Subcontractor has not violated the FCPA. In the event of any breach by Subcontractor of this **Section 10.C**, then, in addition to all other remedies available to CONTRACTOR under law, this Subcontract or otherwise for such breach, CONTRACTOR shall have the right to immediately terminate this Subcontract and thereafter shall have no further obligations to Subcontractor, and shall also have a lawful and fully valid claim against Subcontractor for the funds paid in breach of this clause.

SECTION 11. TECHNICAL DIRECTION; NOTIFICATION OF CHANGES; PRICE/ SCHEDULE REVISIONS

In particular, CONTRACTOR's Project Manager is authorized to provide technical direction in the Work, so long as such direction does not cause an increase in Subcontractor's cost or schedule for performance. Subcontractor shall diligently and promptly perform all Work, including any new and/or changed Work as so directed by CONTRACTOR. Provided, no change order, modification or amendment to this Subcontract shall be valid against CONTRACTOR to increase or otherwise revise in any way any Subcontract Price, Price Schedule or schedule for performance hereunder unless it is in writing and signed by an authorized CONTRACTOR Procurement Representative specifying the dollar amount of such change, Price Schedule and schedule of performance.

No change will be issued to Subcontractor unless CONTRACTOR has received a change by Contractor's Client.

If Subcontractor believes that CONTRACTOR has directed any change in the Work, or that differing site conditions or any other circumstances affecting the Work have occurred, which might require any Subcontract Price or Price Schedule to be increased or otherwise revised in any way, and/or which may affects the Subcontract schedule in any way, Subcontractor must give notice to CONTRACTOR's Procurement Representative, with a copy to CONTRACTOR's Project Manager, by a formal written document conspicuously labeled "**Notice of Change.**" The Notice of Change shall state in summary form the basis for the proposed change and shall include a general estimate of the anticipated effect of the change on the Subcontract Price and/or schedule. Provided, upon receipt of any timely Notice of Change, CONTRACTOR and Subcontractor may promptly work and cooperate together in good faith to seek to equitably review and resolve any issues raised by such Notice of Change, which resolution may be reflected by a written Modification to this Subcontract.

Subcontractor shall not be entitled to an increase in any Subcontract price unless and until CONTRACTOR's Procurement Department has issued and signed a formal Subcontract change order, modification or amendment to this Subcontract.

SECTION 12. CLAIMS

Subcontractor shall follow the claim procedures set forth in this Section 12. No consideration shall be given to claims for additional compensation except as provided in this Section 12.



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

- A. **Obligation to Continue Work:** Regardless of any claims or disputes, or any action taken or to be taken under any Paragraph of this Subcontract with respect to such claims or disputes, whether for an extension of time or for additional compensation or otherwise, Subcontractor shall at all times proceed diligently with the prosecution of its Work.
- B. **Claims for Which Contractor Can Seek Recovery from the Client:** If Subcontractor asserts a claim for damages under circumstances that entitle CONTRACTOR to make a claim for damages against the Client under the Prime Contract, Subcontractor shall file with CONTRACTOR a written claim that meets the requirements of Paragraph 12(f) and is in the form required by the Prime Contract for claims by CONTRACTOR against the Client no later than five (5) days prior to the time when CONTRACTOR is required to file any such claim with the Client. If no specific deadline for claims is contained in the Prime Contract, the Subcontractor shall submit such claim within fourteen (14) days of the commencement of the event allegedly giving rise to the claim.
- C. **Claims for Which CONTRACTOR Cannot Seek Recovery from the Client:** If Subcontractor asserts a claim for alleged damages which is prohibited by this Subcontract, or asserts a claim based on circumstances that do not entitle CONTRACTOR to make a claim for such damages against the Client under the Prime Contract, then upon written notice from CONTRACTOR, Subcontractor shall withdraw the claim.
- D. **Failure to File Waives Claim:** Failure by Subcontractor to deliver to CONTRACTOR any claim for alleged damages within the time limits as set forth in this Section 12 and/or to provide the required damage amounts and other specific information and supporting documentation shall constitute a waiver and estoppel of Subcontractor's rights with respect to such claim for alleged damages.
- E. **Claim Preparation:** With respect to any claim submitted by Subcontractor under this Section 12, Subcontractor shall prepare the claim in writing and in a format acceptable to CONTRACTOR. At a minimum, the claim shall include detailed information concerning the alleged claim-causing event, Subcontractor's damages which allegedly resulted from the event, how the event allegedly caused such damages, and steps allegedly taken by Subcontractor to mitigate the extent of its alleged damages. The claim shall separately list each type of damage allegedly incurred (but in no event shall it include damages barred or waived by this Subcontract) and give the most accurate estimate possible of the amount for each type of alleged damage. Upon request by CONTRACTOR, Subcontractor will provide any other information concerning the claim. By submitting a claim, Subcontractor grants CONTRACTOR the right to examine or audit all of Subcontractor's as well as its lower-tier subcontractors and suppliers, accounting records, job records, payroll records and other records and documents which may have any bearing on the claim. Subcontractor: 1) agrees that such presentation and sponsoring is its exclusive remedy, 2) agrees to provide any needed certifications as to accuracy of pricing required to support similar certifications required of CONTRACTOR under the Prime Contract (See eg, DFARS 252.243-7002), 3) agrees to be bound by the Client's decision on the Claim and accept as final payment on the Claim whatever amount the Client determines to pay with respect to such Claim, 4) bear all costs, including attorney's fees, incurred by CONTRACTOR in presenting the Claim, 5) indemnify, defend and hold harmless CONTRACTOR for any violation or breach of these provisions, and 6) enter into a separate claim sponsorship agreement or Subcontract amendment further refining and implementing this **Section 12.F.**, if so requested by CONTRACTOR.
- F. **Subcontractor Cooperation:** Subcontractor shall cooperate in the prosecution of claims filed by Subcontractor, and shall reimburse CONTRACTOR for all expenses and costs incurred by CONTRACTOR in connection with the preparation and prosecution of such claims against Client or others who may be responsible, including without limitation, costs of litigation, arbitration or alternative dispute resolution proceedings and reasonable



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

attorney's fees and disbursements. Nothing in this Subcontract shall require CONTRACTOR to assert any claim against the Client on Subcontractor's behalf which, in CONTRACTOR's reasonable judgment, is fraudulent, contrary to law, barred by this Subcontract or made by Subcontractor in bad faith.

- G. Claim Against CONTRACTOR Arising out of Subcontractor's Work: If the Client or a third party brings a claim against CONTRACTOR and such claim arises directly, or indirectly, in whole or in part from Subcontractor's Work or other involvement in the Project, Subcontractor shall:
1. cooperate with CONTRACTOR and its counsel in the defense of such claim;
 2. provide, at Subcontractor's expense, all witnesses, expert testimony, documents and other assistance CONTRACTOR reasonably believes necessary for such defense; and
 3. indemnify and hold CONTRACTOR harmless from the cost of any judgment or settlement of such claim, CONTRACTOR's reasonable costs in responding to the claim, and Contractor's reasonable attorneys' fees and disbursements.
- H. Subcontractor Bound by Claims Procedures: Subcontractor expressly consents to be bound to Contractor to the same degree and manner that CONTRACTOR is bound to the Client by all decisions and determinations made in accordance with any procedure for the resolution of claims provided in the Prime Contract. The provisions of this Paragraph H shall be binding upon Subcontractor, whether or not Subcontractor records or files a mechanic's lien, stop notice, or action against any bond posted by CONTRACTOR or Client, or files suit thereon. Subcontractor acknowledges that this Paragraph waives or limits rights it otherwise would have in connection with such liens, stop notices or bonds.

SECTION 13. DISPUTES

- A. Wherever a potential dispute involves in any way the amount of money due Subcontractor for the Work, or the amount of time required for the Work, Subcontractor must first avail itself of the "Claims" process described in **Section 12** above before proceeding under these "Formal Disputes" procedures.
- B. As to any other unresolved dispute, controversy or Claim ("Dispute") between GILBANE FEDERAL and Subcontractor, the parties shall first seek to resolve it through good faith negotiation involving senior management of the Parties. Thereafter, GILBANE FEDERAL shall determine whether the Dispute shall be resolved by: 1) in accordance with the rules of the American Arbitration Association ("AAA"), before one or three arbitrators (chosen by the parties and the AAA in accord with AAA rules) in a given location, or 3) through litigation in a California or other court of competent jurisdiction of Gilbane Federal choice, with or without a jury. Provided, upon Subcontractor's request by written notice, GILBANE FEDERAL shall within twenty days provide notice of such decision to Subcontractor. (If GILBANE FEDERAL fails to provide such notice, the Dispute shall be resolved by AAA arbitration before one arbitrator in Walnut Creek, California.) All dispute resolution proceedings shall be conducted in the English language.
- C. In any such Dispute, a Settlement-Oriented Prevailing Party shall be entitled to receive, as part of any award or judgment, eighty percent (80%) of its reasonable attorneys' fees and expert witnesses' fees incurred in handling the dispute. (Provided, only those attorneys' fees incurred after written notice is given by either party that it will seek to recover them under this clause may be reimbursed hereunder.) For these purposes, a "Settlement-Oriented Prevailing Party" shall be a party who obtains a litigation or arbitration result more favorable to it than its last formal written offer (made at least twenty calendar days prior to the formal trial or hearing) to settle such litigation



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

or arbitration. (Where there is no Settlement-Oriented Prevailing Party, each party shall bear its own attorneys' fees and other costs.) Any arbitration award shall be fully final and binding and enforceable in any court of competent jurisdiction in any country. All dispute resolution proceedings shall be conducted in the English language.

D. Unless otherwise directed by CONTRACTOR, Subcontractor shall continue diligently to perform all Work pending resolution of any Dispute. Subcontractor shall be deemed to have conclusively waived any Claim (including one for which a Notice of Claim was timely submitted) where Subcontractor has failed to initiate formal dispute resolution proceedings under this **Section 13** within one year of the time it knew or should have known of the Claim.

SECTION 14. ASSIGNMENT AND LOWER TIER SUBCONTRACTING

Neither the rights nor duties of this Subcontract (nor the payments to become due hereunder) may be assigned or delegated without the written consent of CONTRACTOR. Subcontractor shall not further subcontract the whole or any part of the Subcontract without prior written consent of CONTRACTOR, which shall not be unreasonably withheld. When Subcontractor does subcontract any of the Work, or procure any materials or services for the Work, from others, Subcontractor shall incorporate all required FAR and other clauses in its subcontracts with such sub-subcontractors and vendors, and Subcontractor shall otherwise comply with all FAR and Prime Contract requirements as to such subcontracting.

SECTION 15. TERMINATION

A. Termination for Convenience

Regardless of any other provision hereof, this Subcontract (or any task or subtask hereunder) may be terminated in whole or in part at any time by CONTRACTOR for CONTRACTOR's convenience if the Client terminates CONTRACTOR for convenience. In such case CONTRACTOR shall pay Subcontractor:

1. all amounts due and not previously paid to Subcontractor for Subcontractor's Work completed in accordance with the Subcontractor documents prior to such notice;
2. expenses incurred prior to receipt of the notice or the effective date of termination, whichever is later, in performing services or furnishing labor, materials or equipment in connection with uncompleted Subcontractor's Work, plus fair and reasonable sums for overhead and profit; and
3. reasonable costs incurred in settling and paying claims arising out the termination of lower tier subcontracts and purchase orders and in demobilization.

B. Termination for Cause

Any one or more of the following shall constitute an event of default by the Subcontractor:

1. The Subcontractor shall fail or refuse to perform or comply with any term, condition or provision of this Agreement or of any of the other Subcontract Documents.
2. The Subcontractor shall fail or refuse to pay any of its sub-subcontractors, suppliers, or workers for any materials, labor or other things incorporated into, or used in connection with, the Work when such payments are due; provided, however, that if the Subcontractor disputes the amount due to a worker, sub-subcontractor or supplier, the Subcontractor, within two (2) days' of the due date of such payment, at its own expense, posts a bond for the disputed payment in amount and form satisfactory to the CONTRACTOR as security for such payments, then such non-payment shall not constitute an event of default hereunder.



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

3. The Subcontractor shall abandon the Work or reduce its labor force to a number insufficient, in the CONTRACTOR's opinion, to complete the Work within the scheduled time.
4. Without limitation of any other right or remedy available to CONTRACTOR under the Contract Documents or at law, should the Subcontractor fail to perform his portion of the Work in a skilled and expeditious manner in accordance with the terms of his Subcontract with sufficient labor, materials, equipment and facilities, delay the progress of the job, or otherwise fail in any of his obligations, or if any assignment is made for the benefit of his creditors, or the Subcontractor files a voluntary petition for bankruptcy or for an arrangement or insolvency proceedings, or if either a receiver should be appointed for the Subcontractor or any bankruptcy or other insolvency proceedings should be filed in a court of record or the Subcontractor is declared to be bankrupt or insolvent and such appointment or bankruptcy or insolvency proceedings or declaration is not set aside within thirty (30) days,
5. If any event of default described in Section 15.B above occurs, then the CONTRACTOR, at its option, at any time may:
 - a. Order the Subcontractor immediately to comply with any term, condition or provision of this Agreement or such other Subcontract Document;
 - b. Order the Subcontractor, within a specified time, to remove any defective work or materials and to replace such work or materials with satisfactory work or materials;
 - c. Accept any defective work or materials and reduce the Subcontract Price accordingly;
 - d. Perform or arrange to have performed any of Subcontractor's duties hereunder;
 - e. Make any payments to satisfy the Subcontractor's obligations relating to the Work for labor, materials, equipment, insurance or other items;
 - f. Refuse to make any payments to the Subcontractor for Work performed until the event of default is cured to the satisfaction of Contractor; and/or
 - g. Upon three (3) days' written notice to the Subcontractor, terminate this Agreement and take possession of all materials, tools, equipment, and appliances of the Subcontractor and finish the Work by whatever means, method or agency which the CONTRACTOR, in its sole discretion, may choose, and take any other steps the CONTRACTOR, in its sole discretion, may choose to secure any labor, materials, equipment and services, and, in such event, the CONTRACTOR shall have a lien on and may take over all Subcontractor's equipment, tools, appliances and materials (whether on or off-site) and complete the Work; provided, however, that if the default involves any breach of safety laws, regulations or requirements, only one (1) day's notice (whether oral or written) shall be required.
6. If the CONTRACTOR terminates this Agreement, as aforesaid, the CONTRACTOR shall have no obligations to pay for any work performed after such termination, and will have no obligation to make any further payments to the Subcontractor for work performed before such termination until the Project has been completed, accepted by the Client and the CONTRACTOR has received full payment for the Project from the Client, and the CONTRACTOR determines to its complete satisfaction that potential expenses, charges and claims relating to the performance of the Work have been satisfied or satisfactorily bonded over. Such



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

payments to the Subcontractor shall in any event be reduced by the amount due to the CONTRACTOR under the terms of this Agreement or any of the other Subcontract documents.

7. The CONTRACTOR's choice of any remedy shall not operate to waive any rights or remedies provided hereunder, or by law, against the Subcontractor or its surety. The CONTRACTOR, at its option, may choose more than one remedy or choose one or more particular remedies at different times.
8. The Subcontractor shall pay, immediately upon demand therefor, all costs, losses, damages and expenses, including, without limitation, all costs and expenses described in Section 11.2 above and all administrative, management, overhead and other direct or indirect expenses, including reasonable attorneys' fees (the "Costs") incurred by the CONTRACTOR in connection with any default by Subcontractor or exercise of any right or remedy upon Subcontractor's default. If the Subcontractor does not pay the Costs immediately, the CONTRACTOR may deduct all Costs from any payments of the Subcontract Price. If payments due to the Subcontractor for completed portions of the Work are not sufficient to cover the Costs, the Subcontractor immediately shall pay to CONTRACTOR the full amount of any such excess with interest thereon until paid in full at three (3) percentage points in excess of the rate of interest announced from time to time by the Wall Street Journal as the prime rate or if it is less, at the maximum interest rate permitted by law. The liability of the Subcontractor hereunder shall extend to and include, without limitation, the full amount of Costs incurred and obligations assumed by the CONTRACTOR in good faith under the reasonable belief that such Costs or obligations were necessary or required, whether actually necessary or required or not, (i) in completing the Work and providing labor, materials, equipment, supplies and other items therefor or resubcontracting the Work, and/or (ii) in settlement, discharge or compromise of any claims, demands, suits and judgments pertaining to or arising out of the Work. An itemized statement of such obligations and payments shall be prima facie evidence of the Subcontractor's liability.

SECTION 16. WARRANTIES

Subcontractor warrants and represents that all its Work will strictly comply with all requirements of the Prime Contract and this Subcontract. In addition, as to all engineering, design, professional environmental or technical services Work, and supplementing any other warranties required to be made by Subcontractor by the Prime Contract in **Section 2** above, Subcontractor hereby warrants that it will conform to the standards and utilize the care and skill recognized by reputable firms performing similar work. As to all construction and other Work and all other goods and services provided pursuant to this Subcontract, Subcontractor hereby warrants that all such Work and goods and services shall be: completed in a workmanlike manner, free from defects in materials and workmanship, new, non-counterfeit and genuine (unless this Subcontract expressly authorizes otherwise) and fit for their intended purpose. (For example, any concrete or masonry placed shall remain free of cracks.) Liability of the Subcontractor regarding warranties is governed by the terms of the Prime Contract.

A formal statement by the Client that CONTRACTOR's work (which was subcontracted to and performed by Subcontractor) is defective shall be one proof that Subcontractor's work is defective.

SECTION 17. ADDITIONAL GENERAL PROVISIONS

A. Execution/General. The terms of this Subcontract may be waived, amended or modified only by a written amendment to the Subcontract signed by both parties. Subcontractor is an independent contractor in the performance of this Subcontract. This Subcontract is the entire agreement of the parties relative to the Work and



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

the Project and supersedes and replaces all previous proposals, negotiations and agreements, particularly including any Subcontractor proposal relating to the Work (unless expressly incorporated herein). Where Subcontractor has begun to perform the Work hereunder, but this Subcontract has not yet been executed by Subcontractor, such commencement of the Work shall act as Subcontractor's acceptance of all the terms and provisions hereof. For purposes of interpretation, this Subcontract was drafted jointly by both parties. This Subcontract may be executed in separately signed and/or telecopied (i.e., faxed) or emailed pdf counterparts having clearly readable authorized signatures.

B. Governing Law and Language. The validity, interpretation and performance of this Subcontract shall be governed and construed in accordance with California law, except to the extent United States Federal procurement law governs. Unless expressly permitted by other provisions hereof, or unless expressly required by local law pertaining to the Site in order for a given instrument or document (such as a local survey) to be valid, all submittals, documents, certificates and other written and oral communications hereunder shall be in the English language.

C. Severability. If any section, subsection, sentence or clause of this Subcontract shall be adjudged illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of this Subcontract as a whole or of any section, subsection, sentence or clause hereof not so adjudged.

D. Bonds. If indicated as required in the Subcontract Order Cover Page(s) or elsewhere in the Subcontract, Subcontractor shall furnish performance and/or payment bonds for the Work in forms and amounts and with such Treasury-Listed sureties as indicated in the Cover Page and as shall be approved by GILBANE FEDERAL. Such bonds shall be provided within ten days of the date of execution of this Subcontract, or earlier if so indicated elsewhere in this Subcontract. All the costs of such bonds shall be included in the pricing described in the Price Schedule. Upon any amendment or modification to this Subcontract which increases the Subcontract Price, and unless otherwise directed by GILBANE FEDERAL, Subcontractor shall increase the penal amount of any such bonds issued hereunder to reflect such new increased Price.

E. Communications with Client/Proprietary Information/Confidentiality/Advertising. Subcontractor recognizes CONTRACTOR as prime contractor for the Work. Subcontractor shall not conduct any oral, written or electronic (e.g., e-mail) communications with the Client or any of its representatives relative to the Work without advance notice to and consent from CONTRACTOR. Further, if any such consent is granted, Subcontractor will regularly and promptly inform CONTRACTOR of all communications of any sort it has with the Client regarding the Work. In particular, Subcontractor will copy CONTRACTOR on all meeting minutes, letters, memos, reports, drawings, emails, and all other information of any sort it provides to Client regarding the Work. CONTRACTOR shall be entitled to attend all meetings of any kind between Subcontractor and Client, and Subcontractor shall provide advance notice of all scheduled meetings to CONTRACTOR as far in advance as practicable. Where CONTRACTOR does not attend a particular meeting, and no minutes are generated, Subcontractor shall promptly provide CONTRACTOR with an email or other report of any material developments at the meeting. Unless Client directs otherwise, any reports delivered to Client by Subcontractor regarding the Work shall be labeled "Submitted (or Prepared) by [Subcontractor's Name] as Subcontractor to Innovative Technical Solutions, Inc." or something similar in meaning.

Subcontractor shall consider all information furnished by CONTRACTOR or the Client, including the Prime Contract, to be confidential and shall use reasonable efforts to avoid disclosure of any such information to any other person or use such information itself for any purpose other than performing this Subcontract, unless Subcontractor obtains written permission from CONTRACTOR to do so. This obligation shall apply to drawings, specifications, or other documents prepared by Subcontractor for CONTRACTOR in connection with this Subcontract. Consistent



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

with the Prime Contract, no information relating to the Subcontract shall be disclosed without the written agreement of both parties hereto. The foregoing obligations shall survive the termination of this Subcontract for a period of two years. Unless otherwise agreed in writing (and neither party shall unreasonably withhold its consent to such an agreement), all commercial, financial or technical information disclosed in any manner or at any time by Subcontractor to CONTRACTOR shall be deemed secret and confidential. The foregoing obligations shall survive the termination of this Subcontract for a period of two years.

If Subcontractor is performing any design Work hereunder, Subcontractor will fully and securely maintain in its own offices, for access and inspection by CONTRACTOR at any reasonable time, robust back-up copies of all plans, AutoCADD drawings, specs and all other information produced under this Subcontract. Further, Subcontractor shall transfer complete electronic copies of any major Project design submittal (e.g. 30%, 60%, 90% and As-Built drawings) to both CONTRACTOR's Project office and CONTRACTOR's California headquarters, in formats (eg, Flash Drives, File Transfer, etc.) as directed by CONTRACTOR from time to time.

F. FAR: Representations and Certifications/Further Acts. Subcontractor has executed the "Reps and Certs" incorporated into this Subcontract. Subcontractor shall also, whenever later required, execute and deliver to CONTRACTOR all certificates and other documents, and take all such other actions, which may be required by applicable FAR and Prime Contract provisions. All such "Reps and Certs" shall be updated upon CONTRACTOR's request. CONTRACTOR may permit Subcontractor to satisfy certain representation requirements by providing its ORCA and/or CCR registrations.

G. Notices. Any notice, consent, demand or request required or permitted to be given under this Subcontract must be in writing, shall be effective upon receipt, and be sent by two methods: 1) by courier service (e.g., FedEx TM), personal delivery, or fax transmission, **AND** 2) e-mail, to the respective addresses shown on the Cover Page(s) or elsewhere in this Subcontract for notice purposes (or to such other addresses as the parties may later designate in writing for notice purposes).

H. Non-Solicitation, No Conflicts. Subcontractor will not now or at any time until one year after the conclusion of the Work encourage any CONTRACTOR employee or consultant to leave CONTRACTOR. Further, Subcontractor will not seek to encourage CONTRACTOR's clients to contract with Subcontractor rather than CONTRACTOR, nor will Subcontractor encourage CONTRACTOR Project Managers or salespeople to join Subcontractor. Subcontractor will not engage in any work or services where any such activity creates a conflict of interest for Subcontractor under this Subcontract, and Subcontractor has not entered, and will not enter, into any agreement with a third party which would in any way cause a breach of this Subcontract.

Similarly, CONTRACTOR will not now or at any time until one year after the conclusion of the Work encourage any Subcontractor's employee or consultant to leave the Subcontractor. Further CONTRACTOR will not encourage Subcontractor's Project Managers or salespeople to join CONTRACTOR. CONTRACTOR has not entered, and will not enter, into any agreement with a third party which would in any way cause a breach of this Subcontract.

I. DPAS Rating. If so stated on the Cover Pages of this Subcontract, this Subcontract may be a rated order certified for national defense use. In such case, Subcontractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700) as applied to any applicable rating for this Subcontract stated on the Cover Pages. Federal Acquisition Regulation (FAR) clause 52.211-15, Defense Priority and Allocation Requirements, is hereby incorporated by reference.



Subcontract No. JGFJV00003-006

ATTACHMENT C
GILBANE FEDERAL DESIGN-BUILD
CONSTRUCTOR SUBCONTRACT GENERAL CONDITIONS-USA

J. Import and Export Compliance. Subcontractor is solely responsible in its performance under this Subcontract for required compliance with the import and export laws and regulations of the United States of America, and to the extent applicable to the Subcontract, the import and export laws and regulations of any other jurisdiction or country.

K. Anti-Human Trafficking. CONTRACTOR endorses the Client's zero tolerance policy regarding trafficking in persons as stated in FAR Clause 52.222-50. Subcontractor shall fully comply with FAR 52.222-50, as it may be amended and expanded from time to time. In particular, Subcontractor not:

- (1) Engage in trafficking in persons during performance of this Subcontract;
- (2) Procure commercial sex acts at any time during the pendency of the Work;
- (3) Use forced labor in the performance of the Work.

Subcontractor shall include the clause at FAR 52.222-50 in all lower tier-subcontracts, and cause its lower tier subcontractors to fully comply with its terms. Any breach of these requirements shall be considered a material breach of this Subcontract.



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

I. PRIME CONTRACT CLAUSES INCORPORATED BY REFERENCE INTO SUBCONTRACT

All of the below-cited provisions in this **Attachment D** from GILBANE FEDERAL (GILBANE) prime contract with the USACE are hereby made applicable to and incorporated by reference into this Subcontract (as further described below and in the General Conditions of the Subcontract).

The applicability of each Prime Contract clause to this Subcontract, as shown in the listing below, is based on the Subcontract compensation type found in the Subcontract Price Schedule, the scope of services or supplies provided (construction, technical services, professional services, commercial items, etc.), contract value, whether the Subcontract is awarded based on price competition or is negotiated, the location of the work, nationality of the Subcontractor, and other factors. If the Subcontractor has any questions about the application of any clause, contact the GILBANE Subcontract Administrator or Buyer.

The terms FAR and DFARS and when used in the following clauses, mean the cited portions of the Federal Acquisition Regulation, the cited portions of the Defense Federal Acquisition Regulation Supplement. AFFARS clauses are not included.

Wherever appropriate to accomplish the purpose of flowing down to Subcontractor all the applicable obligations of FAR/DFARS other Prime Contract provisions, to protect GILBANE'S interest, and/or unless the resulting reading is patently illogical, the words itemized below shall be substituted in the reading of these clauses:

- Department of the USACE shall read as GILBANE
- Government or Department of Defense (DOD) shall read as GILBANE.
- Contractor shall read as Subcontractor.
- Offeror shall read as Subcontractor
- Contracting Officer (CO), Contracting Officer's Representative (COR), and Contracting Officer's Technical Representative (COTR) shall read as GILBANE'S Technical, or other, Representative.
- Contract shall read as Subcontract.
- Task Order shall read as Work Order

Provided, in the case of any of the below listed FAR or other clauses which, by their terms, apply to only particular classes of Subcontractor work or Subcontractor Work Orders; such clauses shall so apply. For example, FAR 52.223-7 (Radioactive Materials) is included in this **Attachment D**. However, in accord with paragraph (d) of such clause, FAR 52.223-7 will be deemed applicable only to Subcontracts which involve radioactive materials/activity as defined in paragraph (a) of said clause.

Provided further, in case of any time period specified in the provisions cited herein, such period shall be shortened to a new period equal to eighty percent (80%) of the original period, in order to give

GILBANE enough time to respond to whatever action is taken by the Subcontractor in the allotted 80 percent period.

Provided further, any FAR, DFAR, AFARS or other Prime Contract clause which is required by express law, regulation, or the client to be included herein, shall be deemed to be so included, whether or not it is actually listed below.

This Subcontract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. The full text of a clause may be accessed electronically via the internet at the following web address:

Federal Acquisition Regulation and supplements: <http://farsite.hill.af.mil/VFFAR1.HTM>



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

FEDERAL ACQUISITION REGULATION CLAUSES BY REFERENCE

52.202-1 Definitions -JAN 2012
52.203-2 Certificate of Independent Price Determination (Apr 1985)
52.203-3 Gratuities -APR 1984
52.203-5 Covenant Against Contingent Fees -APR 1984
52.203-6 Restrictions On Subcontractor Sales To The Government -SEP 2006
52.203-7 Anti-Kickback Procedures -OCT 2010
52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity-JAN 1997
52.203-10 Price Or Fee Adjustment For Illegal Or Improper Activity -JAN 1997
52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sep 2007)
52.203-12 Limitation On Payments To Influence Certain Federal Transactions-OCT 2010
52.203-13 Contractor Code of Business Ethics and Conduct -APR 2010
52.204-2 Alt II Security Requirements -(AUG 1996)-Alternate II -APR 1984
52.204-3 Taxpayer Identification (Oct 1998)
52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper-MAY 2011
52.204-5 Women-Owned Business (Other Than Small Business) (May 1999)
52.204-9 Personal Identity Verification of Contractor Personnel -JAN 2011
52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards-FEB 2012
52.209-2 Prohibition on Contracting with Inverted Domestic Corporations-Representation (May 2011)
52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment- DEC 2010
52.209-10 Prohibition on Contracting With Inverted Domestic Corporations-MAY 2012
52.210-1 Market Research -APR 2011
52.215-2 Audit and Records--Negotiation -OCT 2010
52.215-11 Price Reduction for Defective Certified Cost or Pricing Data--Modifications-AUG 2011
52.215-13 Subcontractor Certified Cost or Pricing Data--Modifications -OCT 2010
52.215-15 Pension Adjustments and Asset Reversions- OCT 2010
52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions-JUL 2005
52.215-19 Notification of Ownership Changes -OCT 1997
52.215-21 Requirements for Certified Cost or Pricing Data or Information Other Than Certified Cost or Pricing Data-- Modifications-OCT 2010
52.219-4 Notice of Price Evaluation Preference for HUBZone Small JAN 2011
52.219-8 Utilization of Small Business Concerns JAN 2011
52.219-9 ALT II Small Business Subcontracting Plan (JAN 2011) Alternate II OCT 2011
52.219-16 Liquidated Damages Subcontracting Plan JAN 1999
52.222-1 Notice To The Government Of Labor Disputes -FEB 1997
52.222-3 Convict Labor JUN 2003
52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation JUL 2005
52.222-6 Davis Bacon Act-JUL 2005
52.222-7 Withholding of Funds FEB 1988
52.222-8 Payrolls and Basic Records JUN 2010
52.222-9 Apprentices and Trainees JUL 2005
52.222-10 Compliance with Copeland Act Requirements FEB 1988
52.222-11 Subcontracts (Labor Standards) JUL 2005
52.222-12 Contract Termination- Debarment FEB 1988
52.222-13 Compliance with Davis-Bacon and Related Act Regulations FEB 1988
52.222-14 Disputes Concerning Labor Standards FEB 1988
52.222-15 Certification of Eligibility FEB 1988
52.222-21 Prohibition Of Segregated Facilities -FEB 1999
52.222-26 Equal Opportunity -MAR 2007
52.222-27 Affirmative Action Compliance Requirements for Construction-FEB 1999
52.222-35 Equal Opportunity for Veterans -SEP 2010
52.222-36 Affirmative Action For Workers With Disabilities -OCT 2010
52.222-37 Employment Reports on Veterans -SEP 2010
52.222-40 Notification of Employee Rights Under the National Labor Relations Act DEC 2010
52.222-50 Combating Trafficking in Persons -FEB 2009



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

52.222-54 Employment Eligibility Verification JUL 2012
 52.223-2 Affirmative Procurement of BioBased Products Under Service And Construction Contracts (JUL 2012)
 52.223-5 Pollution Prevention and Right-to-Know Information- MAY 2011
 52.223-6 Drug-Free Workplace -MAY 2001
 52.223-15 Energy Efficiency in Energy-Consuming Products -DEC 2007
 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts-MAY 2008
 52.223-18 Encouraging Contractor Policies To Ban Text Messaging while Driving-AUG 2011
 52.225-13 Restrictions on Certain Foreign Purchases -JUN 2008
 52.226-1 Utilization of Indian Organizations And Indian-Owned Economic Enterprises JUN 2000
 52.227-4 Patent Indemnity-Construction Contracts -DEC 2007
 52.228-2 Additional Bond Security OCT 1997
 52.228-5 Insurance- Work On a Government Installation JAN 1997
 52.228-12-Prospective Subcontractor Requests for Bonds OCT 1995
 52.228-15 Performance and Payment Bonds- Construction-SEP 2002
 52.229-3 Federal, State and Local Taxes APR 2004
 52.232-5 Payments under Fixed-Price Construction Contracts -SEP 2002
 52.232-17 Interest -OCT 2010
 52.232-23 Assignment Of Claims -JAN 1986
 52.232-27 Prompt Payment for Construction Contracts -OCT 2008
 52.232-33 Payment by Electronic Funds Transfer--Central Contractor Registration-OCT 2003
 52.232-99 (Dev) Providing Accelerated Payment to Small Business Subcontractors (Deviation) AUG 2012
 52.233-1 Disputes JUL 2002
 52.233-3 Protest After Award -AUG 1996
 52.233-4 Applicable Law for Breach of Contract Claim -OCT 2004
 52.236-2 Differing Site Conditions -APR 1984
 52.236-3 Site Investigation and Conditions Affecting the Work -APR 1984
 52.236-4 Physical Data -APR 1984
 52.236-5 Material and Workmanship -APR 1984
 52.236-6 Superintendence by the Contractor -APR 1984
 52.236-7 Permits and Responsibilities -NOV 1991
 52.236-8 Other Contracts -APR 1984
 52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements-APR 1984
 52.236-10 Operations and Storage Areas -APR 1984
 52.236-11 Use and Possession Prior to Completion -APR 1984
 52.236-12 Cleaning Up -APR 1984
 52.236-13 Accident Prevention-NOV 1991
 52.236-14 Availability and Use of Utility Services -APR 1984
 52.236-15 Schedules for Construction Contracts -APR 1984
 52.236-17 Layout of Work -APR 1984
 52.236-21 Alt I Specifications and Drawings for Construction (Feb 1997) -Alternate I-APR 1984
 52.236-25 Requirements for Registration of Designers JUN 2003
 52.236-26 Preconstruction Conference -FEB 1995
 52.242-13 Bankruptcy -JUL 1995
 52.242-14 Suspension of Work -APR 1984
 52.243-4 Changes -JUN 2007
 52.243-7 Notification of Changes (APR 1984)
 52.244-2 Subcontracts (OCT 2010)
 52.246-12 Inspection of Construction -AUG 1996
 52.246-21 Warranty of Construction -MAR 1994
 52.246-23 Limitation of Liability FEB 1997
 52.247-64 Preference for Privately Owned U.S. - Flag Commercial Vessels-FEB 2006
 52.248-3 Value Engineering-Construction -OCT 2010
 52.249-2 Alt I Termination for Convenience of the Government (Fixed-Price) (Apr 2012) - Alternate I-SEP 1996
 52.249-10 Default (Fixed-Price Construction)-APR 1984
 52.251-1 Government Supply Sources APR 2012
 52.253-1 Computer Generated Forms JAN 1991



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION CLAUSES BY REFERENCE

252.203-7000 Requirements Relating to Compensation of Former DOD Officials (SEP 2011)
252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract Related Felonies (DEC 2008)
252.203-7002 Requirement to Inform Employees of Whistleblower Rights (JAN 2009)
252.204-7003 Control of Government Personnel Work Product (APR 1992)
252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991)
252.215-7000 Pricing Adjustments (DEC 1991)
252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements (DEC 2010)
252.225-7031 Secondary Arab Boycott of Israel
252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004)
252.227-7033 Rights in Shop Drawings (APR 1966)
252.227-7037 Validation of Restrictive Markings on Technical Data (JUN 2012)
252.232-7010 Levies on Contract Payments (DEC 2006)
252.236-7002 Contract Drawings, and Specifications AUG 2000
252.247-7023 Transportation of Supplies by Sea MAY 2002

II. FEDERAL ACQUISITION REGULATION CLAUSES INCORPORATED BY FULL TEXT

52.204-99 SYSTEM FOR AWARD MANAGEMENT REGISTRATION (DEVIATION)(AUG 2012)

(a) Definitions. As used in this clause—

"Central Contractor Registration (CCR) database" means the retired primary Government repository for Contractor information required for the conduct of business with the Government.

"Commercial and Government Entity (CAGE) code" means—

(1) A code assigned by the Defense Logistics Agency (DLA) Logistics Information Service to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLA records and maintains in the CAGE master file. This type of code is known as an "NCAGE code."

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities. "Data Universal Numbering System+4 (DUNS+4) number" means the DUNS number means the number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

"Registered in the SAM database" means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number into the SAM database;

(2) The Contractor's CAGE code is in the SAM database; and

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record "Active". The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process. "System for Award Management (SAM)" means the primary Government repository for prospective federal awardee information and the centralized Government system for certain contracting, grants, and other assistance related processes. It includes—

(1) Data collected from prospective federal awardees required for the conduct of business with the Government;

(2) Prospective contractor submitted annual representations and certifications in accordance with FAR Subpart 4.12; and

(3) The list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified under the non-procurement common rule by agencies, Government corporations, or by the Government Accountability Office.

(b)(1) The Contractor shall be registered in the SAM database prior to submitting an invoice and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The SAM registration shall be for the same name and address identified on the contract, with its associated CAGE code and DUNS or DUNS+4.

(3) If indicated by the Government during performance, registration in CCR may be required in lieu of SAM.

(c) If the Contractor does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) A contractor may obtain a DUNS number—

(i) Via the internet at <http://fedgov.dnb.com/webform> or if the contractor does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

- (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The contractor should indicate that it is a contractor for a U.S. Government contract when contacting the local Dun and Bradstreet office.
- (2) The Contractor should be prepared to provide the following information:
- (i) Company legal business name.
 - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (iii) Company physical street address, city, state and Zip Code.
 - (iv) Company mailing address, city, state and Zip Code (if separate from physical).
 - (v) Company telephone number.
 - (vi) Date the company was started.
 - (vii) Number of employees at your location.
 - (viii) Chief executive officer/key manager.
 - (ix) Line of business (industry).
 - (x) Company Headquarters name and address (reporting relationship within your entity).
 - (d) Reserved.
 - (e) Processing time for registration in SAM, which normally takes five business days, should be taken into consideration when registering. Contractors who are not already registered should consider applying for registration at least two weeks prior to invoicing.
 - (f) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
 - (g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer sufficient documentation to support the legally changed name with a minimum of one business day's written notification of its intention to—
 - (A) Change the name in the SAM database;
 - (B) Comply with the requirements of subpart 42.12 of the FAR; and
 - (C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer.
 - (ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.
 - (2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.
 - (h) Contractors may obtain information on registration and annual confirmation requirements via the SAM accessed through <https://www.acquisition.gov> or by calling 866-606-8220, or 334-206-7828 for international calls.
- (End of Clause)

52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within Thirty (30) Calendar Days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least Sixty (60) Calendar Days before the contract expires. The preliminary notice does not commit the Government to an extension.
 - (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
 - (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed Five (5) Years.
- (End of clause)

52.225-11 BUY AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2012)

- (a) Definitions. As used in this clause--
 - Caribbean Basin country construction material means a construction material that--
 - (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
 - (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.
- Commercially available off-the-shelf (COTS) item—



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(1) Means any item of supply (including construction material) that is--

- (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Component means an article, material, or supply incorporated directly into a construction material. Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Designated country means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan or United Kingdom);
- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means--

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if--

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

Foreign construction material means a construction material other than a domestic construction material.

Least developed country construction material means a construction material that--

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been

(3) substantially transformed in a least developed country into a new and different construction material distinct from

(4) the materials from which it was transformed.

(5) "Free Trade Agreement country construction material" means a construction material that--

(6) (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(7) (2) In the case of a construction material that consists in whole or in part of materials from another country, has been

(8) substantially transformed in a FTA country into a new and different construction material distinct from the materials

(9) from which it was transformed.



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(10) "Least developed country construction material" means a construction material that—

(11) (1) Is wholly the growth, product, or manufacture of a least developed country; or (2) In the case of a construction material that consists in whole or in part of materials from another country has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

United States means the 50 States, the District of Columbia, and outlying areas. WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements the Buy American Act (41 U.S.C. chapter 83) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: None

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

Foreign and Domestic Construction Materials Price Comparison

Construction material description Unit of measure Quantity Price (dollars) \1\

Item 1:

Foreign construction material.....

Domestic construction material.....

Item 2:

Foreign construction material.....

Domestic construction material.....

\1\ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued). List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

(End)

52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least Twelve (12) Percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)

52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS

"Actual costs will be used to determine equipment costs for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a terminations settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.

(3) Recorded job costs adjusted for unallowable expenses will be used to determine equipment operating expenses.

(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).

(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate."

(End of Statement)

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://acquisition.gov/far/>

<http://farsite.hill.ar.mil/>

(End of clause)

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (FAR)(48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any Department of Defense FAR Supplement clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation. (End of clause)

252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) "Definition. Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.
(End of clause)

252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless--

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.
(End of clause)

252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (DEC 2006)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$30,000 with a firm, or a subsidiary of a firm, that is identified in the Excluded Parties List System as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Non-procurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Non-procurement Programs.

(End of clause)

252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (JUN 2012)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

(a) Definitions. As used in this clause--

Historically black colleges and universities means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986. Minority institutions means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)). Summary Subcontract Report (SSR) Coordinator means the individual at the department or agency level who is registered in eSRS and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the department or agency.

(b) Except for company or division-wide commercial items subcontracting plans, the term "small disadvantaged business," when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph

(d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian Tribe or a Tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in Section 831(g)(4) of Public Law 101-510.

(f) The master plan is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(h)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) An SSR for other than a commercial subcontracting plan, or construction and related maintenance repair contracts, shall be submitted in eSRS to the department or agency within DoD that administers the majority of the Contractor's individual subcontracting plans. An example would be Defense Finance and Accounting Service or Missile Defense Agency.

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (h)(1)(i) of this clause.

(ii) Except as provided in (h)(2)(iii), the authority to acknowledge receipt or reject SSRs in eSRS resides with the SSR Coordinator at the department or agency that administers the majority of the Contractor's individual subcontracting plans.

(iii) The authority to acknowledge receipt or reject SSRs for construction and related maintenance and repair contracts resides with the SSR Coordinator for each department or agency.

(iv) The authority to acknowledge receipt or reject the Year-End Supplementary Report for Small Disadvantaged Businesses resides with the SSR Coordinator who acknowledges receipt or rejects the SSR.

(v) If the Contractor submits the Small Disadvantaged Business Participation report using eSRS, the authority to acknowledge receipt or reject this report in eSRS resides with the contracting officer who acknowledges receipt or rejects the ISR.

(End of clause)

252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 2012)

(a) "Definitions".

As used in this clause --

(1) "Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) "Toxic or hazardous materials" means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

(End of clause)

252.223-7008 Prohibition of Hexavalent Chromium (MAY 2011)

(a) Definitions. As used in this clause--

Homogeneous material means a material that cannot be mechanically disjointed into different materials and is of uniform composition throughout.

(1) Examples of homogeneous materials include individual types of plastics, ceramics, glass, metals, alloys, paper, board, resins, and surface coatings.

(2) Homogeneous material does not include conversion coatings that chemically modify the substrate.

Mechanically disjointed means that the materials can, in principle, be separated by mechanical actions such as unscrewing, cutting, crushing, grinding, and abrasive processes.

(b) Prohibition.

(1) Unless otherwise specified by the Contracting Officer, the Contractor shall not provide any deliverable or construction material under this contract that--

(i) Contains hexavalent chromium in a concentration greater than 0.1 percent by weight in any homogenous material; or

(ii) Requires the removal or reapplication of hexavalent chromium materials during subsequent sustainment phases of the deliverable or construction material.

(2) This prohibition does not apply to hexavalent chromium produced as a by-product of manufacturing processes.

(c) If authorization for incorporation of hexavalent chromium in a deliverable or construction material is required, the Contractor shall submit a request to the Contracting Officer.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts for supplies, maintenance and repair services, or construction materials.

(End of clause)



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

252.225-7004 REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA--SUBMISSION AFTER AWARD (OCT 2010)

- (a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.
- (b) Reporting requirement. The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that--
- (1) Exceeds \$650,000 in value; and
 - (2) Could be performed inside the United States or Canada.
- (c) Submission of reports. The Contractor--
- (1) Shall submit a report as soon as practical after the information is known;
 - (2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;
 - (3) Need not resubmit information submitted with its offer, unless the information changes;
 - (4) Shall submit all reports to the Contracting Officer; and
 - (5) Shall submit a copy of each report to: Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), OUSD(AT&L)DPAP(CPIC), Washington, DC 20301-3060.
- (d) Report format. The Contractor--
- (1) Shall submit reports using--
 - (i) DD Form 2139, Report of Contract Performance Outside the United States; or
 - (ii) A computer-generated report that contains all information required by DD Form 2139; and
 - (2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.
- (End of clause)

252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (JUN 2012)

- (a) Definitions. As used in this clause--
- Component means any item supplied to the Government as part of an end product or of another component. End product means supplies delivered under a line item of this contract.
- Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457.

Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Structural component of a tent--



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

- (i) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs);
- (ii) Does not include equipment such as heating, cooling, or lighting.
- United States means the 50 States, the District of Columbia, and outlying areas.
- U.S.-flag vessel means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.
- (b) The Contractor shall deliver under this contract only such of the following items, either as end products or components that have been grown, reprocessed, reused, or produced in the United States:
 - (1) Food.
 - (2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.
 - (3) Tents and structural components of tents, tarpaulins, and covers.
 - (4) Cotton and other natural fiber products.
 - (5) Woven silk or woven silk blends.
 - (6) Spun silk yarn for cartridge cloth.
 - (7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.
 - (8) Canvas products.
 - (9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).
 - (10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).
- (c) This clause does not apply--
 - (1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;
 - (2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool--
 - (i) Is not more than 10 percent of the total price of the end product; and (ii) Does not exceed the simplified acquisition threshold in FAR part 2;
 - (3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;
 - (4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;
 - (5) To chemical warfare protective clothing produced in a qualifying country; or
 - (6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if--
 - (i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include--
 - (A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);
 - (B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;
 - (C) Upholstered seats (whether for household, office, or other use); and
 - (D) Parachutes (Federal Supply Class 1670); or
 - (ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.
 - (d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract--
 - (i) Shall be taken from the sea by U.S.-flag vessels; or
 - (ii) If not taken from the sea, shall be obtained from fishing within the United States; and
 - (2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

252.227-7013 RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS. (FEB 2012)

- (a) Definitions. As used in this clause--
 - (1) Computer data base means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
 - (2) Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(3) Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) Covered Government support contractor means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor--

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(6) Detailed manufacturing or process data means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(7) Developed means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art.

To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(8) Developed exclusively at private expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) Developed exclusively with government funds means development was not accomplished exclusively or partially at private expense.

(10) Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) Form, fit, and function data means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(12) Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(13) Government purpose rights means the rights to--

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(14) Limited rights means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if--

(i) The reproduction, release, disclosure, or use is--

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to--

(1) A covered Government support contractor, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract; or

(2) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) Technical data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(16) Unlimited rights means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) Rights in technical data. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) Unlimited rights.

The Government shall have unlimited rights in technical data that are--

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with-

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.

(2) Government purpose rights.

(i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data--

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph

(b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless-

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) Limited rights.

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data--

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(iv) The Contractor acknowledges that--

(A) Limited rights data is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a nondisclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at 252.227-7025, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

(4) Specifically negotiated license rights.

The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(14) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) Prior government rights.

Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless--

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(c) Contractor rights in technical data. All rights not granted to the Government are retained by the Contractor.

(d) Third party copyrighted data. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) Identification and delivery of data to be furnished with restrictions on use, release, or disclosure. (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data. The Contractor asserts for itself, or the



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted—

Technical data to be Furnished	Basis for	Asserted Rights	Name of Person Asserting
With Restrictions \1/	Assertion \2/	Category \3/	Restrictions \4/
(LIST)	(LIST)	(LIST)	(LIST)

\1/ If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such items, component, or process.

\2/ Generally the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

\3/ Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

\4/ Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this contract.

(f) Marking requirements. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) (2) Government purpose rights markings. Data delivered or otherwise furnished to the Government purpose rights shall be marked as follows:

Government Purpose Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. No



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

Limited Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) Special license rights markings. (i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by

Contract No. _____ (Insert contract number) _____, License No. _____ (Insert license identifier)

_____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) Pre-existing data markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) Contractor procedures and records. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall--

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(h) Removal of unjustified and nonconforming markings. (1) Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) Limitation on charges for rights in technical data. (1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when--

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause--



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

- (i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and
- (ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.
- (k) Applicability to subcontractors or suppliers. (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.
- (2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227-7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.
- (3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.
- (4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers. (5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.
- (End of clause)

252.227-7022 GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227-7024 NOTICE AND APPROVAL OF RESTRICTED DESIGNS (APR 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS. (MAR 2011)

(a)(1) For contracts in which the Government will furnish the Contractor with technical data, the terms "covered Government support contractor," "limited rights," and "Government purpose rights" are defined in the clause at 252.227-7013, Rights in Technical Data—Noncommercial Items.

(2) For contracts in which the Government will furnish the Contractor with computer software or computer software documentation, the terms "covered Government support contractor," "government purpose rights," and "restricted rights" are defined in the clause at 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

(3) For Small Business Innovation Research program contracts, the terms "covered Government support contractor," "limited rights," and "restricted rights" are defined in the clause at 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

(b) Technical data or computer software provided to the Contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) GFI marked with limited or restricted rights legends.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor further agrees and acknowledges that--

(A) The data or software will be accessed and used only for the purposes stated in this contract and shall not be used to compete for any Government or non-Government contract;

(B) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(C) The Contractor will ensure that the party whose name appears in the legend is notified of the Contractor's access or use of such data or software;

(D) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement;

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request; and

(F) That a breach of these obligations or restrictions may subject the Contractor to--

(1) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(2) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(3) GFI marked with government purpose rights legends. The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103-7.

(4) GFI marked with specially negotiated license rights legends. The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at 227.7103-7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(5) GFI marked with commercial restrictive legends.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor further agrees and acknowledges that--

(A) The data or software will be accessed and used only for the purposes stated in this contract and shall not be used to compete for any Government or non-Government contract;

(B) The Contractor will take all reasonable steps to protect the technical data against any unauthorized release or disclosure;



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

- (C) The Contractor will ensure that the party whose name appears in the legend is or has been notified of the Contractor's access or use of such data;
- (D) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data as set forth in this clause, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement;
- (E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request; and
- (F) That a breach of these obligations or restrictions may subject the Contractor to--
- (1) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and
- (2) Civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach.
- (c) Indemnification and creation of third party beneficiary rights. The Contractor agrees--
- (1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and
- (2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.
- (End of clause)

252.227-7030 TECHNICAL DATA--WITHHOLDING OF PAYMENT (MAR 2000)

- (a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7013(e)(2) or 252.227-7018(e)(2) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.
- (b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.
- (End of clause)

252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN (DEC 1991)

- (a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.
- (b) The price breakdown --
- (1) Must include sufficient detail to permit an analysis of profit, and of all costs for --
- (i) Material;
- (ii) Labor;
- (iii) Equipment;
- (iv) Subcontracts; and
- (v) Overhead; and
- (2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.
- (c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.
- (d) The Contractor's proposal shall include a justification for any time extension proposed.

252.236-7005 AIRFIELD SAFETY PRECAUTIONS (DEC 1991)

- (a) Definitions. As used in this clause --
- (1) "Landing areas means" --
- (i) The primary surfaces, comprising the surface of the runway, runway shoulders, and lateral safety zones. The length of each primary surface is the same as the runway length. The width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline);
- (ii) The "clear zone" beyond the ends of each runway, i.e., the extension of the primary surface for a distance of 1,000 feet beyond each end of each runway;



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(iii) All taxiways, plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, e.g., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) All aircraft parking aprons, plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) "Safety precaution" areas means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance, or the transitional surface.

(i) "The approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended.

(A) The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway. It continues upward at a slope of 50:1 (1 foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation. At that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there.

(B) The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.

(ii) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(iii) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes.

(A) The inclined plane in each case begins at the edge of the surface.

(B) The slope of the incline plane is 7:1 (1 foot vertically for each 7 feet horizontally). It continues to the point of intersection with the --

(1) Inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation); or

(2) Outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(iv) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone, and approach-departure clearance zone.)

(b) General. (1) The Contractor shall comply with the requirements of this clause while --

(i) Operating all ground equipment (mobile or stationary);

(ii) Placing all materials; and

(iii) Performing all work, upon and around all airfields.

(2) The requirements of this clause are in addition to any other safety requirements of this contract. (c) The Contractor shall -

(1) Report to the Contracting Officer before initiating any work;

(2) Notify the Contracting Officer of proposed changes to locations and operations;

(3) Not permit either its equipment or personnel to use any runway for purposes other than aircraft operation without permission of the Contracting Officer, unless the runway is -

(i) Closed by order of the Contracting Officer; and

(ii) Marked as provided in paragraph (d)(2) of this clause;

(4) Keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft;

(5) Operate mobile equipment according to the safety provisions of this clause, while actually performing work on the airfield. At all other times, the Contractor shall remove all mobile equipment to locations -

(i) Approved by the Contracting Officer;

(ii) At a distance of at least 750 feet from the runway centerline, plus any additional distance; and

(iii) Necessary to ensure compliance with the other provisions of this clause; and (6) Not open a trench unless material is on hand and ready for placing in the trench. As soon as practicable after

material has been placed and work approved, the Contractor shall backfill and compact trenches as required by the contract.

Meanwhile, all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(d) Landing areas. The Contractor shall -

(1) Place nothing upon the landing areas without the authorization of the Contracting Officer;

(2) Outline those landing areas hazardous to aircraft, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated low-intensity red flasher lights by night;

(3) Obtain, at an airfield where flying is controlled, additional permission from the control tower operator every time before entering any landing area, unless the landing area is marked as hazardous in accordance with paragraph (d)(2) of this clause;

(4) Identify all vehicles it operates in landing areas by means of a flag on a staff attached to, and flying above, the vehicle. The flag shall be three feet square, and consist of a checkered pattern of international orange and white squares of 1 foot on each side (except that the flag may vary up to ten percent from each of these dimensions);

(5) Mark all other equipment and materials in the landing areas, using the same marking devices as in paragraph (d)(2) of this clause; and



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(6) Perform work so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(e) Safety precaution areas. The Contractor shall -

(1) Place nothing upon the safety precaution areas without authorization of the Contracting Officer;

(2) Mark all equipment and materials in safety precaution areas, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated, low-intensity red flasher lights by night; and

(3) Provide all objects placed in safety precaution areas with a red light or red lantern at night, if the objects project above the approach-departure clearance surface or above the transitional surface.

252.242-7004 MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (MAY 2011)

(a) Definitions. As used in this clause--

(1) Material management and accounting system (MMAS) means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) Valid time-phased requirements means material that is--

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) Contractor means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(4) Acceptable material management and accounting system means a MMAS that generally complies with the system criteria in paragraph (d) of this clause.

(5) Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) General. The Contractor shall--

(1) Maintain an MMAS that--

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) Disclosure and maintenance requirements. The Contractor shall--

(1) Have policies, procedures, and operating instructions that adequately describe its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO), upon request, the results of internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions; and

(3) Disclose significant changes in its MMAS to the ACO at least 30 days prior to implementation.

(d) System criteria. The MMAS shall have adequate internal controls to ensure system and data integrity, and shall--

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time phased requirements as impacted by minimum/economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that--

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions, such as excess/residual inventory, as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine-readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that--

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/payback technique.



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411-50(b). The Contractor shall maintain consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The "loan/pay-back technique" means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure--

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract; (8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs

(d)(2) and (7) of this clause) to ensure that--

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (d)(1) through (8) of this clause. Government-furnished material shall not be--

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal reviews to ensure compliance with established policies and procedures.

(e) Significant deficiencies.

(1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's MMAS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning--

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval if the Contracting Officer determines that one or more significant deficiencies remain.

(f) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(g) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's MMAS, and the contract includes the clause at 252.242-7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including—

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to----

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

Section 00 73 00 - Special Contract Requirements

RESPONSIBILITY OF THE CONTRACTOR FOR DESIGN - MAY 2002

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

(b) The standard of care for all design services performed under this agreement shall be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the contract specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.

(c) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract. The Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of these services furnished under this contract.

(d) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(e) If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

(End of clause)

WARRANTY OF DESIGN (FIRM-FIXED PRICE DESIGN-BUILD CONTRACT) – MAY 2002

(a) The Contractor warrants that the design shall be performed in accordance with the Contract requirements. Design and design related construction not conforming to the Contract requirements shall be corrected at no additional cost to the Government. The standard of care for design is defined in paragraph (b) of Special Contract Requirement "RESPONSIBILITY OF THE CONTRACTOR FOR DESIGN".

(b) The period of this warranty shall commence upon final completion and the Government's acceptance of the work, or in the case of the Government's beneficial occupancy of all or part of the work for its convenience, prior to final completion and acceptance, at the time of such occupancy.

(c) This design warranty shall be effective from the above event through the Statute of Limitations and Statute of Repose, as applicable to the state that the project is located in.

(d) The rights and remedies of the Government provided for under this clause are in addition to any other rights and remedies provided in this contract or by law.

(End of Clause)

Section 00 73 10 - Supplemental Contract Requirements

REQUIRED INSURANCE

Any successful offeror under this solicitation shall procure and maintain during the entire period of his performance under this contract the following minimum insurance in accordance with FAR 52.228-5, INSURANCE--WORK ON A GOVERNMENT INSTALLATION:



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

- (1) Workmen's Compensation in amounts required by applicable jurisdictional statutes. (FAR 28.307-2a).
- (2) Employers Liability Insurance of at least \$100,000. (FAR 28.307-2a).
- (3) Comprehensive general liability insurance for bodily injury in the minimum limits of \$500,000 per occurrence. No property damage liability insurance is required. (FAR 28.307-2(b)).
- (4) Comprehensive vehicle liability insurance covering the operation of all automobiles used in connection with the performance of the contract in the minimum limits of \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. (FAR 28.3072(c)).

FAR 52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS (Apr 2010)

- (a) (1) The Offeror certifies, to the best of its knowledge and belief, that-
 - (i) The Offeror and/or any of its Principals-
 - (A) Are ☐ Are not ☒ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - (B) Have ☐ Have not ☒ , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks "have", the offeror shall also see 52.209-7, if included in this solicitation);
 - (C) Are ☐ Are not ☒ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.
 - (D) Have ☐ Have not ☒ , within a three-year period preceding this offer, been notified of any delinquent Federal Taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.
- (1) Federal taxes are considered delinquent if both of the following criteria apply:
 - (i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - (ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
- (2) Examples:
 - (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. Â 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
 - (ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability because the taxpayer has had no prior opportunity to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
 - (iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. Â 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.
 - (iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C 362 (the Bankruptcy Code).
- (ii) The Offeror has ☐ , has not ☒ , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
- (2) "Principals," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions). This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.
- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of Provision)

FAR 52.219-2 EQUAL LOW BIDS (Oct 1995)

(a) This provision applies to small business concerns only

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of Provision)

FAR 52.225-20 PROHIBITION ON CONDUCTING RESTRICTED BUSINESS OPERATIONS IN SUDAN-CERTIFICATION (Aug 2009)

(a) Definitions. As used in this provision-

"Business operations" means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

"Marginalized populations of Sudan" means-

(1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) (50 U.S.C. 1701 note); and

(2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.

"Restricted business operations" means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate-

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended

(b) Certification. By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(End of Provision)

DFARS 252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY

As prescribed in 209.104-70(a), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (JAN 2009)

(a) Definitions. As used in this provision-

(1) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries subject to this provision include: Cuba, Iran, Sudan, and Syria.

(3) "Significant interest" means-

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

- (ii) Holding a management position in the firm, such as a director or officer;
 - (iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;
 - (iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or
 - (v) Holding 50 percent or more of the indebtedness of a firm.
 - (b) Prohibition on award. In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.
 - (c) Disclosure. If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include-
 - (1) Identification of each government holding a significant interest; and
 - (2) A description of the significant interest held by each government.
- (End of Provision)

DFARS 252.209-7002 DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT

As prescribed in 209.104-70(b), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (JUN 2010)

(a) Definitions. As used in this provision-

(1) "Effectively owned or controlled" means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror's officers or a majority of the Offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) "Entity controlled by a foreign government"-

(i) Means-

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government.

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) "Foreign government" includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

(4) "Proscribed information" means-

(i) Top Secret information;

(ii) Communications security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

(b) Prohibition on award. No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

(c) Disclosure. The Offeror shall disclose any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror's immediate parent, intermediate parents, and the ultimate parent. Use separate paper as needed, and provide the information in the following format:

Offeror's Point of Contact for Questions about Disclosure

(Name and Phone Number with Country Code, City Code and Area Code, as applicable)

Phone Number:

International Number:

Name and Address of Offeror

Gilbane Federal Joint Venture (Doing Business As:)

(End of Provision)



Attachment Number: D
FAR and Other Flowdown Clauses
Gilbane Federal Prime Contract No: W9127S-13-D-6000

DFARS 252.239-7011 SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES

As prescribed in 239.7411(b), use the following clause:

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (DEC 1991)

- (a) The Government will not directly reimburse the Contractor for the cost of constructing any facilities or providing any equipment, unless the Contracting Officer authorizes direct reimbursement.
 - (b) If the Contractor stops using facilities or equipment which the Government has, in whole or part, directly reimbursed, the Contractor shall allow the Government credit for the value of the facilities or equipment attributable to the Government's contribution. Determine the value of the facilities and equipment on the basis of their foreseeable reuse by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any credit.
 - (c) The amount of the direct special construction charge shall not exceed-
 - (1) The actual costs to the Contractor; and
 - (2) An amount properly allocable to the services to be provided to the Government.
 - (d) The amount of the direct special construction charge shall not include costs incurred by the Contractor which are covered by-
 - (1) A cancellation or termination liability; or
 - (2) The Contractor's recurring or other nonrecurring charges.
 - (e) The Contractor represents that-
 - (1) Recurring charges for the services, facilities, and equipment do not include in the rate base any costs that have been reimbursed by the Government to the Contractor; and
 - (2) Depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government.
 - (f) If it becomes necessary for the Contractor to incur costs to replace any facilities or equipment, the Government shall assume those costs or reimburse the Contractor for replacement costs at mutually acceptable rates under the following circumstances-
 - (1) The Government paid direct special construction charges; or
 - (2) The Government reimbursed the Contractor for those facilities or equipment as a part of the recurring charges; and
 - (3) The need for replacement was due to circumstances beyond the control and without the fault of the Contractor.
 - (g) Before incurring any costs under paragraph (f) of this clause, the Government shall have the right to terminate the service under the Cancellation or Termination of Orders clause of this contract.
- (End of Provision)

ATTACHMENT E:

WAGE DETERMINATION AND CERTIFIED PAYROLL INSTRUCTIONS

W9127S-13-D-6000

0002

Page 15 of 19

Section 00 73 46 - Wage Determination Schedule

General Decision Number: WY140023 01/03/2014 WY23

Superseded General Decision Number: WY20130023

State: Wyoming

Construction Type: Building

County: Laramie County in Wyoming.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Modification Number	Publication Date
0	01/03/2014

ELEV0025-003 01/01/2013

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 39.59	25.185

FOOTNOTE:

a: Vacation Pay: 8% with 5 or more years of service based on regular hourly rate for all hours worked, 6% under 5 years service based on hourly rate for all hours worked. b: Paid holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Veteran's Day; Thanksgiving Day; Friday after Thanksgiving and Christmas Day

IRON0732-016 06/01/2013

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 26.00	17.70

PLUM0192-006 01/01/2013

	Rates	Fringes
PIPEFITTER (Excluding HVAC Pipe Installation).....	\$ 26.46	13.77

* SFWY0669-002 07/01/2013

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 29.61	18.25

W9127S-13-D-6000

0002

Page 16 of 19

SHEE0103-011 06/01/2010

Rates Fringes

SHEET METAL WORKER (Including
HVAC System Installation
(Excluding HVAC Duct
Installation)).....\$ 25.10 12.80

SUWY2011-020 01/11/2011

Rates Fringes

CARPENTER (Form Work Only).....\$ 17.18 3.20

CARPENTER, Excludes Form Work....\$ 21.55 6.15

CEMENT MASON/CONCRETE FINISHER...\$ 17.40 2.46

ELECTRICIAN (Low Voltage
Wiring and Installation of
Alarms).....\$ 23.34 1.11

ELECTRICIAN (Low Voltage
Wiring and Installation of
HVAC/Temperature Controls).....\$ 22.25 1.70

ELECTRICIAN, Includes Low
Voltage Wiring for Computers
and Phones (Excluding Low
Voltage Wiring and
Installation of Alarms and
HVAC/Temperature Controls).....\$ 25.24 2.17

GLAZIER.....\$ 21.69 2.63

HVAC MECHANIC (HVAC Pipe
Installation).....\$ 32.00 2.83

INSTALLER - SIGN.....\$ 17.39 2.17

LABORER: Common or General.....\$ 12.83 0.00

LABORER: Mason Tender -
Cement/Concrete.....\$ 15.13 1.41

PLUMBER, Excludes HVAC Pipe
Installation.....\$ 21.45 13.35

ROOFER.....\$ 16.92 0.00

SHEET METAL WORKER (HVAC Duct
Installation Only).....\$ 22.50 12.88

TRUCK DRIVER: Dump Truck.....\$ 15.99 1.79

WELDERS - Receive rate prescribed for craft performing
 operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within
 the scope of the classifications listed may be added after
 award only as provided in the labor standards contract clauses
 (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification
 and wage rates that have been found to be prevailing for the
 cited type(s) of construction in the area covered by the wage
 determination. The classifications are listed in alphabetical
 order of "identifiers" that indicate whether the particular
 rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with
 characters other than "SU" denotes that the union
 classification and rate have found to be prevailing for that
 classification. Example: PLUM0198-005 07/01/2011. The first
 four letters , PLUM, indicate the international union and the
 four-digit number, 0198, that follows indicates the local union
 number or district council number where applicable , i.e.,
 Plumbers Local 0198. The next number, 005 in the example, is
 an internal number used in processing the wage determination.
 The date, 07/01/2011, following these characters is the
 effective date of the most current negotiated rate/collective
 bargaining agreement which would be July 1, 2011 in the above
 example.

Union prevailing wage rates will be updated to reflect any
 changes in the collective bargaining agreements governing the
 rates.

0000/9999: weighted union wage rates will be published annually
 each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION



**COMPLIANCE WITH THE DAVIS-BACON
AND RELATED ACTS
AND
SUBMISSION OF CERTIFIED PAYROLLS**

Instructions and Forms for Subcontractors

As a Subcontractor for **Gilbane Federal** on the Design Build Medical Clinic Replacement
Project, you are required to comply with the provisions of the Davis-Bacon Act – including payment of wages and fringe benefits in accordance with **Wage Decision No.** NM140032 **dated** 01/03/2014 and submission of **WEEKLY CERTIFIED PAYROLLS**.

This packet provides copies of the applicable wage decision, forms you will need to submit to GILBANE FEDERAL, and the text of the Davis-Bacon Act for your reference.

If you have any questions regarding compliance or submission of Certified Payrolls, please contact GILBANE FEDERAL's Project Administrator Virginia Ross, at 210-463-9021.

THE APPLICABLE WAGE DECISION:

The labor classifications and associated minimum wages and fringe benefits for work performed on the [Design Build Medical Clinic Replacement] project are provided in the attached:

GENERAL DECISION

NM140032

Please carefully review this wage decision and ensure that you pay/provide your workforce on this project the wages, fringe benefits, paid holidays, and premium pay listed in the decision.

If you have questions about the decision, **PLEASE ASK!** We want to assist you in any way to ensure full compliance with Davis-Bacon.

THE REQUIRED FORMS:

You will need to submit four forms – one prior to beginning work on the project, one for every lower-tier subcontractor working for you on the project, and two on a weekly basis throughout your period of performance on the project:

1. Statement And Acknowledgment–SF 1413

Prior to beginning performance on the project, you will be provided an SF1413 for your company. GILBANE FEDERAL will complete Part I of the form listing the contract information. You will be required to sign Part II acknowledging your acceptance of the Davis-Bacon provisions and confirming that you will submit the required Certified Payrolls throughout project performance.

2. A signed and completed SF1413 for every one of your lower-tier construction subcontractor (*at every tier*) performing work for you

on this project. The SF1413 must be submitted to GILBANE FEDERAL prior to your lower-tier subcontractors' performance throughout performance.

3. For each week during which your workforce is on-site at the project: **Certified Payrolls** confirming payment of wages and fringe benefits to your workforce in compliance with the wage decision.
4. For each week during the subcontract period of performance that no on-site work is performed by your workforce: **Statement of Non Performance** [sample attached].

NOTE: You are also responsible for weekly submission of Certified Payrolls (or Statement of Non Performance) for each of your lower tier subcontractors.

GILBANE FEDERAL prefers submission of Certified Payrolls on:

Form WH-347

<http://www.dol.gov/whd/forms/wh347.pdf>

<http://www.dol.gov/whd/forms/wh347instr.htm>

Please carefully review the Instructions for completion of this form.

You may also want to review GILBANE FEDERAL's Certified Payrolls Checklist.

REMEMBER

CERTIFIED PAYROLL FORMS FOR THIS PROJECT MUST BE SUBMITTED WEEKLY TO THE AUTHORIZED GILBANE FEDERAL REPRESENTATIVE:

Your invoices may not be processed until all Certified Payrolls have been properly completed, signed and submitted to GILBANE FEDERAL.

CERTIFIED PAYROLL FORM CHECKLIST

- ☐ **Subcontractor Name, Address, Project Location and PO/Subcontract Number Completed? Subcontractor Box checked?**

- ☐ **Payroll Numbered? Verify no break in sequence of numbered payrolls.**

- ☐ **Week Ending Date Completed? Matches GILBANE FEDERAL Project Daily Records confirming dates subcontractor performed work on the site?**

- ☐ **Column 1: Full Names and last 4 digits of SS# of Employees listed?**

- ☐ **Column 2: Optional. Subcontractors may elect to leave this column blank.**

- ☐ **Column 3: Work Classification(s) listed matches one or more job titles on the Wage Decision? If Apprentice, copy of documentation confirming enrollment in bona fide Apprenticeship Program attached? If individual worked in more than one labor classification, separate entries listed to provide accurate breakdown of hours worked in each classification?**

- ☐ **Column 4: Days of the week and dates worked listed? Straight time and Overtime hours worked each day listed?**

- ☐ **Column 5: Total hours entry correct?**

- ☐ **Column 6: Straight time rate of pay meets or exceeds minimum wages listed for the applicable classification in the Wage Decision? Any cash in lieu of fringe benefits shown separately (to facilitate calculation of Overtime rate)?**

- ☐ **Column 7: Hours' time rate correct? If part of wages earned on another project, does Col 7 show first amount earned on this project and then gross amount earned on all work?**

- ☐ **Column 8: Deductions completed? If 'Other' column used, are details of Other deductions listed on page 2 under the compliance certification or provided as an attachment? THIS IS MANDATORY UNDER THE COPELAND ANTI-KICKBACK ACT! Certified payrolls without full explanation of all deductions will not be accepted. (Reference 29CFR Part 3, sections 3.5 and 3.6.)**

- ☐ **Column 9: Net Wages Paid calculation checked?**

- ☐ **Page 2: Certification statement completed? (Other deductions listed – see Col 8 above)**

____ **(4) Fringe Benefits:**

Box (a) checked for fringe payments to a Collective Bargaining Unit or other approved Plan, Fund or Program; or

Box (b) checked if fringes are paid to the employee in cash.

(In certain instances, both boxes may be checked to indicate payment under a Collective Bargaining Agreement/Union Program only partially meets the fringe benefits requirement of the Wage Decision, and the balance is paid directly to the employee in cash.)

____ **Name and Title of individual certifying the payrolls is listed and legible? Form is signed by authorized Subcontractor representative?**

For any checklist items not completed, explain deficiency and follow-up action to be taken below:

Remarks:

Completed by:

Date:

FREQUENTLY ASKED QUESTIONS

Covered Projects and Workers

Question: What projects are covered by the Davis-Bacon Act?

Answer: Any contract over \$2000 to which the United States is a party for the construction, alteration, or repair of public buildings or public works is covered by the Davis-Bacon Act which requires specified minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors and their subcontractors are to pay workers employed on the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Secretary of Labor determines the prevailing wages and publishes them in General Decisions which are incorporated into the contracts.

Question: How do workers on a site know that a project is covered by the Davis-Bacon Act and how do they know the prevailing wage to which they are entitled?

Answer: The wage determination and a Davis-Bacon poster must be posted at all times at the site of the work. These documents are posted in the [GILBANE FEDERAL Project Office].

Apprentices and Trainees

Question: Can apprentices, trainees, and/or helpers work on a project covered by the Davis-Bacon or related acts, and what wage rates must they be paid?

Answer: Individuals who meet the following definition may be employed as apprentices on DBRA projects:

(a) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau,

or

(b) A person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been properly certified to be eligible for probationary employment as an apprentice.

Trainees employed must be persons registered in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which have been so certified by that Administration.

Information on wage rates paid to apprentices and trainees is not reflected in Davis-Bacon wage determinations. Similarly, their addition through the additional classification procedure (conformance) is neither necessary nor appropriate. On projects funded by the Federal-Aid Highway Act, apprentices and trainees certified by the Secretary of Transportation are not covered by Davis-Bacon labor standards.

The proper wage rates to be paid to apprentices and trainees are those specified by the particular programs in which they are enrolled, expressed as a percentage of the journeyman rate on the wage determination. In the event employees reported as apprentices or trainees on a covered project have not been properly registered within the meaning of the Regulations and the contract stipulations, or are utilized at the job site in excess of the ratio to journeymen permitted under the approved program, they must be paid the applicable wage rates for laborers and mechanics employed on the project performing in the classification of work they actually performed. This applies regardless of work classifications which may be listed on the submitted payrolls and regardless of their level of skill.

Helper classifications may be issued in or added to a wage determination only where the (a) the duties of the helpers are clearly defined and distinct from those of the journeyman classification and from the laborer, (b) the use of such helpers is an established prevailing practice in the area, and (c) the term "helper" is not synonymous with "trainee" in an informal training program.

Supervisory Personnel

Question: What wage rates must be paid to supervisory employees (foremen, etc.) employed on a Davis-Bacon project?

Answer: The wage rates for bona fide supervisory employees are not regulated under the Davis-Bacon and Related Acts because their duties are primarily administrative or executive in nature rather than those of laborers or mechanics. However, such employees who devote more than 20 percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent, and must be paid at least the appropriate wage rates specified in the wage determination. Employees who are bona fide executive, administrative, or professional employees as defined under the Fair Labor Standards Act at 29 CFR Part 541 are not covered by the Davis-Bacon Act.

Fringe Benefits

Question: What counts as fringe benefits?

Answer: Fringe benefits are:

- 1) Contributions irrevocable made to a trustee or third party pursuant to a bona fide benefit fund plan or program, i.e., under a Collective Bargaining Unit/Union.
- 2) The rate of costs incurred in providing benefits under an enforceable commitment communicated to employees in writing, such as:
 - Life Insurance
 - Health Insurance
 - Pension
 - Vacation
 - Holidays
 - Sick Leave

Payments required by federal, state or local law are NOT fringe benefits, i.e., Social Security, unemployment compensation, and Workers' Compensation.

Payroll Deductions

Question: What payroll deductions may be made?

Answer: 29CFR Part 3 specifies the permissible deductions:

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

- (a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.
- (b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.
- (c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.
- (d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, That the following standards are met:

- (1) The deduction is not otherwise prohibited by law;
 - (2) It is either:
 - (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or
 - (ii) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;
 - (3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and
 - (4) The deductions shall serve the convenience and interest of the employee.
- (e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
- (f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
- (h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.
- (i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, that a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.
- (j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under §516.25(a) of this title shall be kept.
- (k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either:
- (1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under §3.5. The Secretary may grant permission whenever he finds that:

- (a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;
 - (b) The deduction is not otherwise prohibited by law;
 - (c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and
 - (d) The deduction serves the convenience and interest of the employee.
-

THE DAVIS-BACON AND RELATED ACTS

- **Contract Work Hours and Safety Standards Act - Overtime Compensation**
- **Payrolls and Basic Records**
- **Withholding of Funds**
- **Disputes Concerning Labor Standards**
- **Compliance with Davis-Bacon and Related Act Regulations**
- **Davis-Bacon Act Apprentices and Trainees Compliance with Copeland Act Requirements Subcontracts (Labor Standards)**
- **Contract Termination - Debarment Certification of Eligibility**

For information on how to access the full text of these requirements refer to the flowdown clauses section of your subcontract.

For information on compliance with these requirements, see:

<http://www.dol.gov/compliance/laws/comp-dbra.htm>



(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐

ADDRESS

OMB No.: 1215-0149
Expires: 12/31/2011

PAYROLL NO.

FOR WEEK ENDING

PROJECT AND LOCATION

PROJECT OR CONTRACT NO.

[illegible]

While completion of Form WH-347¹ is optional, it is mandatory for covered contractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "turnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and Federal contracting agencies receiving this information review the information to determine that employees have legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

(over)

Date _____

I, _____ (Name of Signatory Party) _____ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ (Contractor or Subcontractor) _____ on the

_____ (Building or Work) _____; that during the payroll period commencing on the

_____ day of _____, and ending the _____ day of _____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ (Contractor or Subcontractor) _____ from the full

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ - in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ - Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.



Statement of Non-Performance

Consecutive Payroll Number: _____ Date: _____

Subcontract Number: _____
(example: 1234-07017.6206)

Prime Contractor or Subcontractor Name: _____
(example: ABC Grading & Paving)

I do hereby state that no persons were employed on the construction of the project:

_____ during the payroll period commencing on the

(example: PAFB Pool Renovation, Bldg. 404)

_____ day of _____, 20__ and ending the _____ day of _____, 20__

This statement is not required to be submitted until after submission of the *initial* certified payroll report, with actual hours worked. It then must be submitted each week when no work is performed until the final certified payroll report is submitted.

Print Name of Authorized Person

Job Title

Signature of Authorized Person

Date Signed



ATTACHMENT F

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

GILBANE FEDERAL Project Name and Location _____

GILBANE FEDERAL PO/Subcontract Number _____

Progress Payment \$ _____

Release: Gilbane Federal Company (formerly and also known as Innovative Technical Solutions, Inc.) ("GILBANE") proposes to pay the below-named GILBANE FEDERAL subcontractor or supplier ("Subcontractor") the above-shown Progress Payment. Subcontractor agrees that, once such Progress Payment has been duly paid and received by Subcontractor, Subcontractor hereby dismisses, releases and forever discharges GILBANE FEDERAL, GILBANE FEDERAL's client, GILBANE FEDERAL's successors, assigns, directors, officers, agents, and employees, GILBANE FEDERAL's sureties, GILBANE FEDERAL's bonds, any owner of the Project site, and the Project site itself (collectively, the "Released Entities") from all Miller Act or other claims, mechanics or other liens, stop notices, causes of action, change orders, and obligations of any nature arising out of the performance of, or in any way connected with, the above-named PO/Subcontract, excepting only any such claims which have not yet in any way accrued or arisen as of the effective date shown below.

Lower Tier Subs & Cert Payroll: As additional consideration for the Progress Payment, Subcontractor hereby certifies and represents that: a) Subcontractor has already made or will within ten days after receipt of the Progress Payment make full payment of all costs, charges and expenses incurred by Subcontractor or on Subcontractor's behalf for work, labor, services, materials and equipment thus far supplied to the above-named Project and/or used in connection with Subcontractor's work under the PO/Subcontract, b) each of Subcontractor's subcontractors and suppliers has in turn similarly already made or will immediately make full payment of all costs, charges, and expenses incurred by them for work, labor, services, materials and equipment in any way provided to such Project, and c) Subcontractor has thus far submitted to GILBANE FEDERAL accurate and complete certified payrolls if required to do so by the Subcontract/PO.

Indemnity: In addition, Subcontractor shall indemnify and hold harmless the Released Entities from and against all costs, losses, damages, bond or other claims, causes of action, judgments, and expenses, including attorneys' fees, arising out of or in connection with the performance of the PO/Subcontract, as amended, which may be asserted by Subcontractor or any of its subcontractors, suppliers, representatives, officers, agents or employees.

Ongoing Warranty and Representations: Subcontractor warrants and represents that: a) all product and other warranties made in the Subcontract/PO by Subcontractor and/or its suppliers, and all other terms of the Subcontract/PO not specifically modified herein, remain in place and are fully enforceable in accordance with their terms, b) the Subcontract/PO has been safely performed thus far without any deaths, serious injuries or lost time or reportable accidents of any kind involving Subcontractor's employees, Subcontractor's lower tier subs' employees or third parties, and c) Subcontractor has fully complied with (and will continue to fully comply with) all ethical requirements of the FAR and DFARS applicable to the Subcontract/PO, including but not limited to: FAR 52.207-6, 52.203-7, 52.203-11, 52.203-13, 52.203-15, and 52.204-11.

Survival: Nothing in the foregoing shall relieve Subcontractor of any of its ongoing duties under such PO/Subcontract, including without limitation, warranties, guarantees, and indemnities.

Further Acts: Subcontractor shall cooperate fully and will execute any and all supplementary documents that may be necessary or appropriate to give full force to the basic terms and intent of this Release. Where this Release has been conclusively shown to violate any applicable law, it shall thereupon be deemed minimally modified to comply with such law, while still retaining its basic final binding release characteristics.

ALL THE FOREGOING IS ACKNOWLEDGED AND AGREED:

Subcontractor Name _____

Authorized Signature _____ Effective Date _____ 201_____

Print Name and Title _____



ATTACHMENT F

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

GILBANE FEDERAL Project Name and Location _____

GILBANE FEDERAL PO/Subcontract Number _____

Final Payment \$ _____

Release: Gilbane Federal Company (formerly and also known as Innovative Technical Solutions, Inc.) ("GILBANE") proposes to pay the below-named GILBANE FEDERAL subcontractor or supplier ("Subcontractor") the above-shown Final Payment. Subcontractor agrees that, once such Final Payment has been duly paid and received by Subcontractor, Subcontractor hereby dismisses, releases and forever discharges GILBANE FEDERAL, GILBANE FEDERAL's client, GILBANE FEDERAL's successors, assigns, directors, officers, agents, and employees, GILBANE FEDERAL's sureties, GILBANE FEDERAL's bonds, any owner of the Project site, and the Project site itself (collectively, the "Released Entities") from all Miller Act or other claims, mechanics or other liens, stop notices, causes of action, change orders, and obligations of any nature arising out of the performance of, or in any way connected with, the above-named PO/Subcontract.

Lower Tier Subs & Cert Payroll: As additional consideration for the Final Payment, Subcontractor hereby certifies and represents that: a) Subcontractor has already made or will within ten days after receipt of the Final Payment make full payment of all costs, charges and expenses incurred by Subcontractor or on Subcontractor's behalf for work, labor, services, materials and equipment supplied to the above-named Project and/or used in connection with Subcontractor's work under the PO/Subcontract, b) each of Subcontractor's subcontractors and suppliers has in turn similarly already made or will immediately make full payment of all costs, charges, and expenses incurred by them for work, labor, services, materials and equipment in any way provided to such Project, and c) Subcontractor has submitted to GILBANE FEDERAL accurate and complete certified payrolls if required to do so by the Subcontract/PO.

Indemnity: In addition, Subcontractor shall indemnify and hold harmless the Released Entities from and against all costs, losses, damages, bond or other claims, causes of action, judgments, and expenses, including attorneys' fees, arising out of or in connection with the performance of the PO/Subcontract, as amended, which may be asserted by Subcontractor or any of its subcontractors, suppliers, representatives, officers, agents or employees.

Ongoing Warranty and Representations: Subcontractor warrants and represents that: a) all product and other warranties made in the Subcontract/PO by Subcontractor and/or its suppliers, and all other terms of the Subcontract/PO not specifically modified herein, remain in place and are fully enforceable in accordance with their terms, b) the Subcontract/PO has been safely completed without any deaths, serious injuries or lost time or reportable accidents of any kind involving Subcontractor's employees, Subcontractor's lower tier subs' employees or third parties, and c) Subcontractor has fully complied with (and will continue to fully comply with) all ethical requirements of the FAR and DFARS applicable to the Subcontract/PO, including but not limited to: FAR 52.207-6, 52.203-7, 52.203-11, 52.203-13, 52.203-15, and 52.204-11.

Survival: Nothing in the foregoing shall relieve Subcontractor of any of duties under such PO/Subcontract which by their nature survive completion or termination of the PO/Subcontract, including without limitation, warranties, guarantees, and indemnities.

Further Acts: Subcontractor shall cooperate fully and will execute any and all supplementary documents that may be necessary or appropriate to give full force to the basic terms and intent of this Release. Where this Release has been conclusively shown to violate any applicable law, it shall thereupon be deemed minimally modified to comply with such law, while still retaining its basic final binding release characteristics.

ALL THE FOREGOING IS ACKNOWLEDGED AND AGREED:

Subcontractor Name _____

Authorized Signature _____ Effective Date _____ 201_____

Print Name and Title _____



SMALL BUSINESS SUBCONTRACTING PLAN

(For information purposes only. The following outline meets the minimum requirements of Section 8(d) and the Federal Acquisition Regulation (FAR) Subpart 19.7. It is not intended to replace any existing corporate plan which may be more extensive.

(NOTE: IN COMPLETING THE PLAN, SUBCONTRACTOR MAY REMOVE ALL INSTRUCTION LANGUAGE IN BRACKETS AND BLUE. THIS IS FOR YOUR INFORMATION ONLY. IT IS NOT PART OF THE SMALL BUSINESS SUBCONTRACTING PLAN.)

I. IDENTIFICATION DATA:

Subcontractor Name: _____

Address: _____

Solicitation or Subcontract Number: _____

Item/Service: _____

Estimated Subcontract Dollar Value (Include Options, if applicable) _____

Individual Subcontract Period: Base: _____

Option(s): _____

Date Prepared: _____

Plan Period: _____

II. TYPE OF PLAN: (Check only one)

COMMERCIAL PRODUCTS PLAN: Used when a company sells large quantities of commercial off-the-shelf commodities to many Government agencies. Goals are negotiated on a company-wide basis. Plan is done annually, effective during the company's fiscal year, approved by the first Federal agency awarding a contract for commercial products during the contractor's fiscal year, and is applicable to every additional Federal contract for commercial products awarded to that contractor during the contractor's same fiscal year. A new plan must be obtained and approved 30 days prior to the expiration of the current plan.

INDIVIDUAL SUBCONTRACT PLAN: Covers the entire subcontract period (including option periods), applies to a specific subcontract, and has goals which are based on the company's planned subcontracting and purchasing in support of the performance of a specific subcontract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the subcontract.

INDIVIDUAL SUBCONTRACT PLAN INCORPORATING MASTER PLAN: Master plans containing all the required elements of an individual subcontract plan, except goals, may be incorporated into individual subcontract plans providing the master plan has been approved. A master plan must be approved once every three years. Once incorporated into a subcontract with specific goals, it is valid for the life of the subcontract.

III. GOALS:

A. *(For information purposes only. FAR 19.704(a)(1) requires separate percentage goals for using small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, service-disabled veteran-owned small, and OTHER small business concerns as subcontractors; and a statement of the total dollars planned to be subcontracted to small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small, and OTHER business concerns. NOTE: The dollar amounts planned for subcontracting to SB, to HZSB, to SDB, to WOSB, to VOSB, to SDVOSB, and to OTHER small business concerns must be expressed as percentages of the total subcontracting dollars as shown below.) Commercial plans will always reflect annual goals. Individual plans will reflect 5-year goals for Base and Option.*

Subcontractor provides the following separate dollar and percentage goals for small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, service-disabled veteran-owned small, and OTHER small business concerns. These goals are a percentage of the total subcontracting dollars:

1. Estimated total dollars planned to be subcontracted; i.e. to **all types of business** concerns under this contract is:

Base Subcontract: \$	_____	100%	_____
Option Period: \$	_____	100%	_____
Option Period: \$	_____	100%	_____
Option Period: \$	_____	100%	_____

2. Planned subcontracting to **large business** concerns (those classified as other than small) is:

Base Subcontract: \$	_____	% of total =	_____
Option Period: \$	_____	% of total =	_____
Option Period: \$	_____	% of total =	_____
Option Period: \$	_____	% of total =	_____

3. Planned subcontracting to all **small business** concerns (include HUBZone small, small disadvantaged, women-owned small, veteran-owned small, service-disabled veteran-owned small, and OTHER small businesses) is:

Base Subcontract: \$	_____	% of total =	_____
Option Period: \$	_____	% of total =	_____
Option Period: \$	_____	% of total =	_____
Option Period: \$	_____	% of total =	_____

4. Planned subcontracting to **HUBZone small business** concerns is:

Base Subcontract: \$	_____	% of total =	_____
Option Period: \$	_____	% of total =	_____
Option Period: \$	_____	% of total =	_____
Option Period: \$	_____	% of total =	_____

5. Planned subcontracting to **small disadvantaged business** concerns is:

Base Subcontract: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____

6. Planned subcontracting to **women-owned small business** concerns is:

Base Subcontract: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____

7. Planned subcontracting to **veteran-owned small business** concerns is:

Base Subcontract: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____

8. Planned subcontracting to **service-disabled veteran-owned small business** concerns is:

Base Subcontract: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____

9. Planned subcontracting to **OTHER small business** concerns is:

Base Subcontract: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____
 Option Period: \$ _____ % of total = _____

B. *(For information purposes only. FAR 19.704(a)(3) requires a description of the principal types of supplies and services to be subcontracted and an identification of the types planned for subcontracting to SB, to HZSB, to SDB, to WOSB, to VOSB, and to SDVOSB concerns.) (Check all below that apply.)*

The principal types of products and/or services that Subcontractor anticipates to be subcontracted and the identification of the type of business concern planned are as follows:

Business Category or Size

Product/Service	Large	Small	HZSB	SDB	WOSB	VOSB	SDVOSB

C. (For information purposes only. FAR 19.704(a)(4) requires a description of the method used to develop the subcontracting goals for SB, to HZSB, to SDB, to WOSB, to VOSB, and to SDVOSB concerns. Explain the method and state the quantitative basis (in dollars) used to establish the percentage goals; how the areas to be subcontracted to SB, to HZSB, to SDB, to WOSB, to VOSB, and to SDVOSB concerns were determined; and how the capabilities of SB, to HZSB, to SDB, to WOSB, to VOSB, and to SDVOSB concerns were determined. Identify all source lists used in the determination.)

Subcontractor used the following method to develop the subcontracting goals set forth herein:

D. (For information purposes only. FAR 19.704(a)(5) requires a description of the method used to identify potential sources for solicitation purposes.)

Subcontractor identifies potential subcontractors using the following source lists and organizations:

E. (For information purposes only. FAR 19.704(a)(6) requires a statement as to whether or not your company included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with SB, HZSB, SDB, WOSB, VOSB, and SDVOSB concerns.)

Indirect and overhead costs _____ **HAVE BEEN** or _____ **HAVE NOT BEEN** included in the dollar and percentage subcontracting goals stated above. The indirect and overhead portion was based on the following:

IV. PROGRAM ADMINISTRATOR:

(For information purposes only. FAR 19.704(a)(7) requires information about the company employee who will administer the subcontracting program. Please provide the name, title, address, telephone number, fax machine number, position within the corporate structure, and the duties of that employee.)

Name: _____

Title: _____

Address: _____

Telephone: _____

Position: _____

Duties: The Program Administrator shall have general overall responsibility for Subcontractor's subcontracting program; i.e., developing, preparing, and executing individual subcontracting plans and monitoring performance relative to this particular plan. These duties include, but are not limited to, the following activities:

1. Developing and promoting company/division policy statements that demonstrate the company's/division's support for awarding contracts and subcontracts to small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small business concerns.
2. Developing and maintaining bidders' lists of small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small business concerns from all possible sources.
3. Ensuring periodic rotation of potential subcontractors on bidders' lists.
4. Assuring that small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small businesses are included on the bidders' list for every subcontract solicitation for products and services they are capable of providing.
5. Ensuring that subcontract procurement "packages" are designed to permit the maximum possible participation of small, HUBZone small, small disadvantaged, women-owned small businesses, veteran-owned small, and service-disabled veteran-owned small.
6. Reviewing subcontract solicitations to remove statements, clauses, etc. which might tend to restrict or prohibit small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small business participation.
7. Ensuring that the subcontract bid proposal review board documents its reasons for not selecting any low bids submitted by small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small business concerns.
8. Overseeing the establishment and maintenance of contact and subcontract award records.
9. Attending or arranging for the attendance of company counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.
10. Directly or indirectly counseling small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small business concerns on subcontracting opportunities and how to prepare bids to the company.
11. Providing notice to subcontractors concerning penalties for misrepresentations of business status as small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, or service-

disabled veteran-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the contractor's subcontracting plan.

12. Conducting or arranging training for purchasing personnel regarding the intent and impact of Section 8(d) of the Small Business Act on purchasing procedures.
13. Developing and maintaining an incentive program for buyers that support the subcontracting program.
14. Monitoring the company's performance and making any adjustments necessary to achieve the subcontract plan goals.
15. Preparing and submitting timely reports.
16. Coordinating the company's activities during compliance review by Federal agencies.

V. EQUITABLE OPPORTUNITY:

(For information purposes only. FAR 19.704(a)(8) requires a description of the efforts of Subcontractor will make to ensure that SB, HZSB, SDB, WOSB, VOSB, and SDVOSB concerns will have an equitable opportunity to compete for Subcontractor's subcontracts.)

Subcontractor will make every effort to ensure that small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small business concerns will have an equitable opportunity to compete for subcontracts. These efforts include, but are not limited to, the following activities:

A. Outreach efforts to obtain sources:

- ☐ Contracting minority and small business trade associations
- ☐ Contacting business development organizations
- ☐ Requesting sources from the Small Business Administration's Procurement Marketing and Access Network (PRO-Net) System
- ☐ Attending small, minority, and women-owned small business procurement conferences and trade fairs

B. Internal efforts to guide and encourage purchasing personnel:

- ☐ Presenting workshops, seminars and training programs
- ☐ Establishing, maintaining and using small, HUBZone small, small disadvantaged, and women-owned small business source lists, guides, and other data for soliciting subcontracts
- ☐ Monitoring activities to evaluate compliance with the subcontracting plan

C. Additional efforts: (Please describe.)

VI. CLAUSE INCLUSION AND FLOW DOWN:

(For information purposes only. FAR 19.704(a)(9) requires that your company include FAR 52.219-8, "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities. Your company must require all subcontractors, except small business concerns, that receive subcontracts in excess of \$650,000 (\$1,500,000 for construction) to adopt a plan that complies with the requirements of the clause at FAR 52.219-9, "Small Business Subcontracting Plan.")

Subcontractor agrees to include the clause at FAR 52.219-8, "Utilization of Small Business Concerns" in all subcontracts that it places that offer further subcontracting opportunities, and that it will further require all of Subcontractor's subcontractors (except Small Business concerns), who receive subcontracts in excess

of \$650,000, (\$1,500,000 for construction) to adopt a plan that complies with the requirements to the plan required by the clause at FAR 52.219-9, "Small Business Subcontracting Plan."

VII. REPORTING AND COOPERATION:

(For information purposes only. FAR 19.704(a)(10) requires your company to (1) cooperate in any studies or surveys as may be required; (2) submit periodic reports which show compliance with the subcontracting plan; (3) submit Individual Subcontract Reports (ISRs) and Summary Subcontract Reports (SSRs) in accordance with the instructions on the forms; and (4) ensure that Subcontractor's subcontractors agree to submit ISRs and SSRs.)

Subcontractor agrees to: (1) cooperate in any studies or surveys as may be required; (2) submit periodic reports which show compliance with this subcontracting plan; (3) submit ISRs and SSRs in accordance with the instructions on the forms; and (4) ensure that Subcontractor's subcontractors agree to submit ISRs and SSRs.

Reports are to be submitted within thirty (30) days after the close of each calendar period indicated below:

<u>Calendar Period</u>	<u>Report Due</u>	<u>Date Due</u>	<u>Send Report To:</u>
10/01—03/31	ISR	04/30	Gilbane Procurement
04/01—09/30	ISR	10/30	Gilbane Procurement
10/01—09/30	SSR	10/30	Gilbane Procurement

VIII. RECORDKEEPING:

(For information purposes only. FAR 19.704(a)(11) requires a list of the types of records your company will maintain to demonstrate the procedures adopted to comply with the requirements and goals in the subcontracting plan.)

Subcontractor will maintain at least the following types of records to demonstrate procedures adopted to comply with the requirements and goals in the subcontracting plan. These records include, but are not limited to:

- A. Small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small business concern source lists, guides, and other data identifying such vendors.
- B. Organizations contacted for small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small business sources.
- C. On a contract-by-contract basis, all subcontract solicitations over \$100,000, which indicate for each solicitation (1) whether small business concerns were solicited, and if not, why not; (2) whether HUBZone small business concerns were solicited, and if not, why not; (3) whether small disadvantaged business concerns were solicited, and if not, why not; (4) whether women-owned small business concerns were solicited, and if not, why not; (5) whether veteran-owned small business concerns were solicited, and if not, why not; (6) whether service-disabled veteran-owned small business concerns were solicited, and if not, why not; and (7) reasons for the failure of solicited concerns to receive the subcontract award.
- D. Records to support other outreach efforts, e.g., contacts with minority and small business trade associations, attendance at small, minority, and women-owned small business procurement conference and trade fairs.
- E. Records to support internal activities to (1) guide and encourage purchasing personnel, e.g., workshops, seminars, training programs, incentive awards; and (2) monitor activities to evaluate compliance.

F. On a contract-by contract basis, records to support subcontract award data including the name, address and business size of each subcontractor. (This item is not required for company or division-wide commercial product plans).

G. Other records to support your compliance with the subcontracting plan: (Please describe)

IX. TIMELY PAYMENTS TO SUBCONTRACTOR'S SUBCONTRACTORS:

(For information purposes only. FAR 19.702 requires your company to establish and use procedures to ensure the timely payment of amounts due pursuant to the terms of your subcontracts with small, HUBZone small, small disadvantaged, women-owned small, and veteran-owned small, and service-disabled veteran-owned small business concerns.

Subcontractor uses procedures to ensure timely payments of amounts due, pursuant to the terms of its subcontracts with small business concerns, as required in FAR 19.702.

X. DESCRIPTION OF GOOD FAITH EFFORT:

(For information purposes only. Maximum practicable utilization of small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled small business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and 15 U.S.C. 637(d)(4)(F) directs that liquidated damages shall be paid by the contractor. In order to demonstrate your compliance with a good faith effort to achieve the small business subcontracting goal, outline the steps your company plans to take.)

Subcontractor will take the following steps to demonstrate compliance with a good faith effort in achieving small business subcontracting goals:

These steps will be negotiated with the Gilbane Subcontract Administrator prior to approval of the plan. Subcontractor understands that this subcontracting plan will be made a material part of the subcontract and that the submission of the ISR and SSR will be made a line item deliverable in the subcontract.

XI. SIGNATURE REQUIRED:

SUBMITTED BY:

Signature

Name

Title

Company

Date

APPROVED BY:

Signature

Shawn Sanchez

Name

Senior Subcontracts Administrator

Title

GILBANE FEDERAL COMPANY

Company

Date

CIVIL COVER SHEET

18-cv-181-F

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Bart's Electric Company, Inc.

(b) County of Residence of First Listed Plaintiff Clay County, MO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Davis & Cannon, LLP, 422 W. 26th Street, Cheyenne, WY 82001
307-634-3210

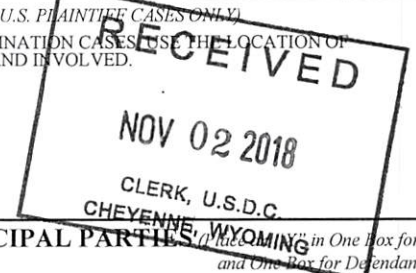
DEFENDANTS

Gilbane Federal and
Travelers Casualty and Surety Company of America

County of Residence of First Listed Defendant Contra Costa, CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)



II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input checked="" type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

40 U.S.C. 3133

Brief description of cause:

Miller Act claim for non payment of subcontractor

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

232,761.83

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/2/18

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

\$400.00

APPLYING IFP

JUDGE

Frederick

MAG. JUDGE

CH4029779